REPORT OF CASES

DETERMINED IN THE

COURT OF NIZAMUT ADAWLUT,

FROM JULY TO DECEMBER 1853.

WITH AN INDEX.

Vol. III. Part I.

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CASES

IN THE

NIZAMUT ADAWLUT.

PRESENT:

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT AND PREM CHOWDHRY,

versus

GUNSHEAM, FAQUEER GWALLA, TIRBHOOWUN AND KOOTOHUL.

Bhauglepore.

1853.

July 1.

Case of GUNSHEAM and others.

Conviction of receiving property obtained by Dacoity upheld, but sentence reduced and excessive fine under Act 16 of 1850 entirely remitted.

CRIME CHARGED.—1st count. Dacoity and plunder of property to the amount of rupees 3,608-6; 2nd count, Receiving and possessing plundered property, knowing at the time of receiving it, that it had been obtained by dacoity and plunder.

CRIME ESTABLISHED.—Receiving and possessing plundered property, knowing at the time of receiving it, that it had been obtained by dacoity and plunder.

Committing Officer.—Mr. R. O. Heywood, magistrate of Bhagulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 26th May, 1853.

Remarks by the sessions judge:—Prisoners plead "*not guilty.*" On the night of the 18th of December last, a dacoity with open violence took place in the main street of the large village of Muhadewa on the high road between Bhagulpore and Monghyr. The house of Prem Chowdhry, complainant, was forcibly entered, and property to a considerable amount stolen. Prem states, that he was sleeping in the southern verandeh of his premises, his family being inside, when he heard a noise at his door, and waking up saw the light of *mussals* through the chinks, he thought it was some gentleman travelling by dawk,

1853. July 1. Case of GUNSHEAM and others.

and that the bearers perhaps wanted something to eat, he went to open the door, when it was forcibly entered by cutting the fastenings, and a number of men twenty or more with six lighted *mussals*, in tightened *dhootees* and faces bound up in cloth, rushed in and struck him with their *latees*, he then escaped and went out to rouse the neighbours, does not recognize any of the prisoners as concerned in the dacoity; knew them by sight before, but was in such a state of confusion at the time that he might, or might not have recognized them, had they been there.

Witnesses, Nos. 5, 6, 7 and 10, are all near neighbours; heard Prem's call and got up and saw the dacoits and lighted *mussals;* distinguished some of them as residents of Puharpore, but did not know their names; had occasionally seen them in the bazar; they were threatened by them with death if they left their houses; they heard a noise from Prem's house as if breaking open boxes; do not recognize any of the prisoners as concerned in the dacoity of the night of the 18th of December; knew them all before by sight, should have recognized them if they had been among the dacoits.

The dacoity took place, on Saturday, the night of the 18th, or nearly on Sunday morning, of the 19th December. On the same morning of the 19th, notice was given at the thannah, four *coss* off, by witness, No. 11. On the same day prosecutor's deposition was taken, and a list of the property stolen given in. On the 20th Sham Singh, Pertum Singh, Jhundee Singh, Zalim Singh, Jeeah Moosohur, Horil and Jhummun, were apprehended on evidence of eye-witnesses. These have all been acquitted by the magistrate, the evidence breaking down in their identification. On the 21st of December, the houses of prisoners, 7, 8 and 9, were searched on a requisition of Prem Chowdhry, complainant, who requested that search might be made in the houses of the *dharee* and *gwalla* tribes in *mouzahs* Pearea and Burrearpore. On the darogah's first arrival with his *jumadar* at Burrearpore, an empty *taut* bag was found in the field of one Hurchurn. Then on apprehension of Gunsheam, prisoner No. 7, he, Gunsheam, pointed out two *taut* bags, containing pice worth 39 rupees buried in an opium field, and on searching the houses, two small parcels of pice, worth about two rupees four annas were found in Gunsheam's house, and two parcels of pice, worth two rupees five annas in Faqueer's house, one in dwelling-house, the other concealed under some cow-dung in the cow-house, an empty *taut* bag was taken from the house of Tirbhoowun, also a *koolharee* with broken edge, which complainant states to be that with which his boxes were broken open; Kootohul, prisoner No. 10, is son of, and lives with, prisoner, No. 9.

1853.

January 1.

Case of RUTUN DOSS NAGA.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—"The prisoner urges in appeal the *alibi* pleaded in defence on trial and some alleged discrepancies in the evidence for the prosecution. He has been convicted on full and satisfactory proof. The alleged discrepancies are not of importance and such an *alibi* as that relied on, cannot be allowed to have weight against the direct and presumptive proof of guilt on the record. The appeal is rejected.

PRESENT:

SIR R. BARLOW, BART.,
W. B. JACKSON, ESQ.,
J. DUNBAR, ESQ., } *Judges.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT
versus
MAHOMED KAMIL.

CHITTAGONG.

1853.

January 6.

Case of MAHOMED KAMIL.

A prisoner who had returned from transportation without any circumstance of aggravation attending his escape, was directed to be re-transported.

The imposition of double irons and hardest labor proposed by one judge of the court, not coincided in by the deciding judges.

CRIME CHARGED.—Returning to Bengal from transportation, having effected his escape from the Moulmein jail, on 26th April 1850, to which place he had been transported for life by order of one of the judges of the Sudder Nizamut Adawlut, on 26th April '44.

Committing Officer, Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, officiating additional sessions judge of Chittagong, on the 24th November 1852.

Remarks by the officiating additional sessions judge.—The identity of the prisoner is fully proved by witnesses Nos. 1 to 9, and by witness No. 11, and the prisoner indeed admits that he was transported to Moulmein and escaped thence.

The sentence of the prisoner to transportation is proved by the warrant dated 7th May 1844, and his escape from transportation is proved by the letter of the magistrate of Moulmein, No. 102, dated 21st September 1852, and the letter of the Superintendent of Police, No. 1557, dated 19th July 1850, and the descriptive roll, and there appears no room for doubt that the prisoner was sentenced to be transported by the Nizamut Adawlut, and that he has escaped and returned from transportation.

By Clause 2, Section IX. of Regulation LIII. of 1803, the prisoner is liable to suffer death. I consider that the prisoner is entitled to little credit for delivering himself up to the judge on the 25th June 1852, more than two years after he had effected his escape. He admits that a person had recognized him in the town and had threatened to denounce him, and the story he told to the magistrate, both as it relates to the time and manner of his escape from Moul-

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1853.

January 6.

Case of MAHOMED KAMIL.

mein, is palpably false, and is fully disproved by the letter of the principal assistant commissioner of Tenasserim Provinces, No. 722, dated 21st September 1852.

His escape however was attended by no act of violence or positive act of insubordination. If the laws admitted of a mitigated punishment, I would recommend one, but as the circumstances of the case do not admit of a minor punishment, and as the escape has been attended by no aggravating circumstance, I beg to recommend that the prisoner be again transported beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner made his escape in April 1850, from the Moulmein jail, as appears from the letter of the superintendent of the police, whereas the letter of Lieutenant Briggs, the officiating magistrate in charge of the jail, reports that the prisoner escaped from work in that month.

The prisoner in his answer states the Burmese attacked the jail and released him *this year*, carried him off for two months and ill-used him, he therefore availed himself of the opportunity and made his escape and arrived some eight days previous to his seizure, in the Chittagong district. The prisoner's story is evidently false: he made his escape long ago, not, as asserted, recently, and in the manner he describes. The law, Clause 2, Section IX. Regulation LIII. of 1803, is imperative. A convict who escapes and returns *shall* on conviction thereof, if no circumstances appear to the court to render such convict an object of mercy, *be adjudged to suffer death*. I know not where to look for circumstances which would warrant a mitigated sentence in this case; none are pleaded. The law must take its course unless the Government exercise their prerogative, but I confess I see no ground for such a recommendation being sent up by the court.

MR. J. DUNBAR.—There is no doubt that the prisoner returned to Bengal without permission, having effected his escape from Moulmein, to which place he had been transported for life by this court in the year 1844. He has consequently rendered himself liable to the penalty of death, as laid down in Clause 2, Section IX. Regulation LIII. of 1803.

The law quoted above, directs that a convict who returns without permission from the place to which he may have been transported for life, shall be adjudged to suffer death, if no circumstances appear to the court to render such convict an object of mercy. It appears to me that there are circumstances to justify a mitigated sentence in this case;—*first*, the prisoner has already undergone a six years' imprisonment in transportation, and he is now an old man (sixty, according to the judge's letter reporting the trial); *secondly*, there is nothing on the record to show that he was aware of the nature of the penalty he was incurring when he effected his escape, indeed the fact of his returning to his own birth-place, and having

1853. January 6. Case of MAHOMED KAMIL.

been in some degree consenting to his own apprehension and production before the authorities, warrants the supposition that he did not know the extent of his danger ; yet the full penalty of his offence is so terrible that if the offence was committed in ignorance, it would be extremely harsh, if not unjust, to inflict it ; *thirdly*, infliction of the penalty is not necessary or expedient. It might have been necessary had escapes from transportation been of very frequent occurrence, or it might have been expedient had the prisoner been a notorious offender, whose return could not be but productive of many evil consequences, but neither of these contingencies apply. On these grounds I would sentence the prisoner Mahomed Kamil to be re-transported for life, and both as a punishment for the offence committed by him and with a view to deter others, I would direct that he should be double-ironed and kept at the hardest labor which the system of jail discipline admits, for a period of two years.

With reference to my remarks as to the probable ignorance of the prisoner with respect to the penalty to which prisoners escaping from transportation are liable, I think it advisable that in future, the nature and extent of this penalty should be carefully explained to every convict under sentence of transportation for life, previous to his embarkation. If the court at large concur in this, the requisite order can be issued.

Mr. A. J. M. Mills.—The guilt of the prisoner is satisfactorily established, and he has rendered himself liable to a sentence of death. Sir R. Barlow seeing no mitigating circumstances in his case, would pass that sentence upon him. Mr. Dunbar would mitigate it to re-transportation for life with directions to the magistrate to keep the prisoner double-ironed to the hardest labor which the system of jail discipline admits for a period of two years, upon the following grounds ;—*first*, because the prisoner is now an old man ; *secondly*, because there is nothing in the record to show that he was aware of the nature of the penalty he was incurring when he effected his escape ; *thirdly*, because the infliction of the penalty is not necessary or expedient.

I do not find on the two first grounds any sufficient reason for extenuating the punishment. The prisoner was thirty-two years' old when he was convicted of murder in 1844, and is now therefore only forty years' old ; again a sane man must be conclusively presumed to be acquainted with the criminal law of the land ; this is a maxim uniformly recognized in every country, indeed, it cannot I think, be *reasonably* inferred that the prisoner was ignorant of the penalty, when it is considered that he was confined in the jail of Moulmein, which is *filled* with life *convicts in transportation*.

I concur with Mr. Dunbar in mitigating the sentence on the third ground.

Some trials of convicts returning from transportation for life, have taken place in the courts of this Presidency, but in none of them has

1853. January 6. Case of MAHOMED KAMIL.

it ever been deemed necessary to inflict the extreme penalty of the law. In England the offence is no longer capital, and in my opinion the returning from transportation should not be punished with death, unless it is accomplished by violence or bloodshed, or is otherwise deemed necessary for the sake of a public deterring example, in order to give the utmost efficacy to the sentence of transportation. In this case the escape was unattended with any force, and the offence does not appear to be of frequent occurrence, so as to call for exemplary punishment, and these are circumstances which appear to me to justify a mitigated sentence.

I would therefore sentence the prisoner to be again transported for life to a penal settlement, and kept there to hard labor in irons. I do not think the court can legally direct the prisoner to be double-ironed, and kept at the heaviest labor which the system of jail discipline admits of, for a *period of two years;* this is a matter entirely in the discretion of the jail authorities.

I do not myself see any reason for having explained to every convict under sentence of transportation for life, the nature and extent of the penalty of escaping previous to embarkation. The penalty is, I have no doubt, as well known to them as is any other part of our criminal law and every person is bound to know it, and presumed to have that knowledge.

MR. W. B. JACKSON.—The evidence in the case proves merely that the prisoner was sentenced to transportation for life, and was actually transported for life, and has nevertheless made his appearance in Bengal, having in some way escaped and returned from transportation; there is no evidence whatever as to the manner of his escape. The letters alluded to on the subject, are not admissible as evidence; the prisoner says he was carried away by the Burmese, but has no proof of this.

I would therefore convict him of returning from transportation for life; he is liable to a sentence of death under the law, but as there is no evidence as to the manner of his escape, he must have the credit of the most lenient supposition; that is, that he escaped from negligent keeping. Under such circumstances I would not pass sentence of death, but transport him again for imprisonment, with hard labor, for life.

I do not think it legal to prescribe the kind of labor to which the prisoner is to be put; double-irons and the hardest labor are, I think, beyond the power of this court to inflict. I am also opposed to any such sentence on the score of humanity.

PRESENT :

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

BYCAUNTNATH BHUTTACHARJE.

24-PERGHS.

1853.

January 7.

Case of BYCAUNTNATH BHUTTACHARJE.

It not being known that in his second deposition, the prisoner was about to acknowledge having previously perjured himself, held that that second deposition was properly taken on oath.

CRIME CHARGED.—Perjury, in having deposed, on solemn declaration, on the 1st September 1852, before the magistrate, and on the 2nd September 1852, before the deputy magistrate of 24-Pergunnahs, that Nubo Thacoor and others had assaulted him, and stripped him of his wearing cloth, and again on solemn declaration, on the said 2nd September 1852, before the deputy magistrate aforesaid, that Nubo Thacoor, &c., did not assault him, but that at the instigation of Mohesh Kur, &c., *mookhtars*, he had made the false deposition as above, one of these depositions being false, and both being contradictory of each other on a point material to the issue of the case.

Committing Officer, Moulvee Abdool Luteef, deputy magistrate, exercising magisterial powers, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 21st December 1852.

Remarks by the additional sessions judge.—On the 21st of September, the prisoner appears by the record to have gone to the magistrate in a lame state, and the magistrate directed his deposition to be taken. Accordingly it was written by a mohurir, in the presence of the magistrate. The mohurir states that the man repeated the solemn declaration, that what he deposed was written, and that he, the mohurir, then read it over to the man who signed it, but the magistrate did not hear it read to the prisoner. At the time that the deposition was written, the mohurir observed to the magistrate that the man had been drinking, but it did not appear that he was drunk.

The magistrate directed the deputy magistrate to investigate the case, and it appears that the next morning the latter proceeded to the scene of the asserted assault and took the man's deposition to the same purport that is stated in the charge, but the name of Nubo is not written ; it is only said that the *assamees* assaulted him and took away his clothes. This deposition is partly written on the same paper as that of the former paper. It is proved by the evidence of the writer alone, but it was signed by the prisoner himself, and has the counter-signature of the deputy magistrate. About 4 P. M. of the same day, the prisoner appears to have gone to the deputy magistrate and to have said that his previous statements were false ; on hearing which the deputy magistrate at once called witnesses, and took his deposition on oath, to the effect that he had twice perjured himself, as his former statements were false. This the deputy magistrate ought not to have done, as was ruled in the case

1853.

January 7.

Case of BYCAUNT-NATH BHUT-TACHARJE.

of Government *versus* Gunga Bishen, page 180 of volume 2 of reported cases, and owing to which Gunga Bishen was acquitted, but there is a difference between that case and this. Gunga Bishen appears to have been tried for having given false evidence on oath on the 19th of April, and the evidence against him was his own second deposition on oath which was insufficient to prove the first deposition false. But this prisoner is accused of having made contradictory statements on oath, and I believe that he did make those of the 2nd of September in the usual manner, and that they were read to him and signed by him, and as the *minimum* punishment for the offence is defined, and the crime is fully proved to have been committed, I certainly have not the power of releasing the prisoner, but must report the circumstance for the consideration of the Court.

The law officer acquits the prisoner, as there is only one witness to prove the first deposition which was taken by the deputy magistrate ; but I have no doubt about its having been made by the prisoner, who does not even deny it, but only says he was not recovered from his former drunken state. I find the prisoner guilty of having made two contradictory statements on a point material to the issue of the case, on the 2nd of September 1852, but for the reason given above, I propose that he should be released.

Since writing the above report, I have received the decision of the court in the case of Nobeen Bhur Tantee, which was referred by me from Hooghly on the 18th September last, with my letter, No. 71, of the 23rd idem, and which was decided by the court, (Present : A. J. M. Mills, Esq.,) on the 26th ultimo, and on that precedent, the court will perhaps consider that the prisoner should be punished, and I see no reason for proposing a diminution of punishment below three (3) years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The case of Gunga Bishen is not in point. In this case, the prisoner, who was the complainant in the case before the deputy magistrate, came before that officer in the afternoon of the 2nd of September, after he had been examined by the magistrate on the 1st of September, and by the deputy magistrate on the morning of the 2nd at the scene of the alleged assault, and volunteered a fresh statement. The deputy magistrate accordingly re-examined him on oath, and the prisoner admitted that his former statements were false. It does not appear that the deputy magistrate was even aware that the prisoner was about to acknowledge that he had perjured himself. Under these circumstances, I do not think the deputy magistrate acted wrongly in examining the prisoner on oath. He pleads guilty on the trial, alleging that he was under the influence of liquor when he deposed before the magistrate on the 1st of September and before the deputy magistrate on the morning of the 2nd, but this plea is altogether unsupported by evidence. I accordingly convict the prisoner and sentence him to three (3) years' imprisonment, with labor and in irons.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

KEFATOOLLA SHEIKH (No. 1,) BHOLAI SHEIKH (No. 2,) HESAMDEE SHEIKH (No. 3) AND MOTOOK MUNDUL (No. 4).

JESSORE.

1853.

January 8.

Case of KEFATOOLLA SHEIKH and others.

The perjury charged having been committed in a case in which judicial sentence was passed, conviction and sentence were affirmed.

CRIME CHARGED.—Nos. 1, 2 and 3, perjury, in having, on the 8th March 1852, 26th Phagoon 1258, intentionally and deliberately deposed, under a solemn declaration, taken instead of an oath, before Mr. Beaufort, late magistrate of Jessore, that Ram Mohun, Yasin, Jasim, Dushruth, Shurit-oolla, &c., (more or less) committed the dacoities in the Soonderbuns, and that Chunder Dutt was the instigator of these depredations; and in having, on the 31st August 1852, 17th Bhadoon 1259, as regards the prisoner Kefatoolla, intentionally and deliberately denied, when questioned by the prisoner Ram Mohun, under a solemn declaration, taken instead of an oath, before Mr. C. S. Belli, officiating magistrate of Jessore, that he suspected the prisoners of committing dacoity, or that he had ever said that he had suspected them, and reiterated this assertion when the question was repeated by the officiating magistrate, as regards the prisoners Bholai and Hesamdee; in having, on the 31st August 1852, 17th Bhadoon 1259, intentionally and deliberately denied, under a solemn declaration, taken instead of an oath, before Mr. C. S. Belli, officiating magistrate of Jessore, that they suspected the prisoner Chunder Dutt of instigating the above dacoities, or that they had said that they had suspected him, to the former magistrate, before whom they (the prisoners) had not given evidence: which statements of the several prisoners are contradictory of each other in points material to the issue of the case.

Prisoner No. 4 charged with perjury, in having, on the 8th March 1852, 26th Phagoon 1258, intentionally and deliberately deposed, under a solemn declaration, taken instead of an oath, before Mr. Beaufort, late magistrate of Jessore, that Shurit-oolla, Dushruth, Ram Mohun, Yasin, Joheeruddi, Chooramonee and Bulram, committed the dacoities in the Soonderbuns, and that Chunder Dutt was the instigator of these depredations; and in having, on the 6th September, 23rd Bhadoon 1259, intentionally and deliberately under a solemn declaration, taken instead of an oath, before Mr. C. S. Belli, officiating magistrate of Jessore, denied his previous statements and stated that Shurit-oolla, Dushruth, &c., were good characters, that Chunder Dutt was not an instigator of dacoities, and that his previous deposition was given through fear: such statements being contradictory of each other, on a point material to the issue of the case.

1853.

January 8.

Case of KEFATOOLLA SHEIKH and others.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. C. S. Belli, officiating magistrate of Jessore.

Tried before Mr. R. N. Skinner, sessions judge of Jessore, on the 6th October 1852.

Remarks by the sessions judge.—When Mr. Beaufort was in the interior, inquiring for perpetrators of the frequent dacoities in the Soonderbuns, the prisoners on the 8th March, gave evidence that certain persons were suspected characters; but subsequently, on being confronted with the accused, that they might identify them and be interrogated by them, retracted the accusation. The prisoners whom they had accused were accordingly discharged.

Such statements being contradictory of each other, on a point material to the issue of the case, the false witnesses were committed for perjury.

The crime is duly proved by their contradictory depositions on record, by the testimony of those before or by whom they were recorded as well as by the answers of the prisoners themselves before me.

The jury give a verdict of "*guilty*," in which I coincide, and accordingly I sentence Kefatoolla, Bholai, Hesamdee and Motook, each to be imprisoned with labor, in irons, for three years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The explanation* regarding the prisoners Kefatoolla and

* *Extract (Paragraph 1,) from a letter from the Register of the Nizamut Adawlut, to the Sessions Judge of Jessore, No.* 1573, *dated* 26*th November* 1852.

The Court having had before them the statements connected with the sessions of jail delivery, held by you in the month of October last, direct me to observe that the propriety of the conviction in the case noted in the margin, is somewhat doubtful. The perjury laid was apparently committed in a police investigation, and not in a criminal judicial proceeding as required by Clause 1, Section IV., Regulation II. of 1807. You are therefore requested to submit, in original, your own and the officiating magistrate's proceedings on the trial, and commitment for their inspection, and state, at the same time, whether any direct charge, in regard to any particular act of crime, had been laid against the parties who were named by the prisoners in their first statement to Mr. Beaufort.

Sessions Judge's Reply, No. 366, *dated* 21*st December* 1852.

I have the honor to report that, on receipt of your letter, No. 1573, of 26th ultimo, I called upon the acting magistrate for the papers of his court, and for the information required by paragraph 1. In his reply he stated, that the parties under trial before Mr. Beaufort, were charged under Regulation VIII. of 1818, with being notorious bad characters, and with earning their livelihood by plundering boats in the Soondurbuns. The papers of that trial were subsequently received with his letter, No. 528, of 8th Idem, and I yesterday received his letter of yesterday, No. 535, forwarding Mr. Dampier's, No. 188, of 24th January, and the charge therein alluded to, copy of which with the officiating magistrate's, Nos. 525 and 535, the original papers of the trial before Mr. Beaufort

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January 8.

Case of KEFATOOLLA SHEIKH and others.

others, has been received. I find that certain persons, Ram Mohun, Yasin, Jasim, Shurit-oolla and others, were charged on the oaths of the prisoners Kefatoolla and others, before the magistrate of Jessore, Mr. Beaufort, with being dacoits and bad characters. They were sent up to the sessions judge with a recommendation that security for good conduct should be required from them for the space of three years. Subsequently, as appears from paragraph 1 of Mr. Belli's letter, No. 535, to the address of the sessions judge of Jessore, the prisoners made directly contradictory statements as charged in the calendar, and denied before Mr. Belli that they had ever thrown suspicion upon the parties they had named before Mr. Beaufort.

The trial before the last-mentioned officer of the above-named Ram Mohun and others, was completed, and the evidence of their witnesses was taken, and though no particular case of dacoity was established against them, enough was in the opinion of the magistrate proved to justify a call for security under Regulation VIII. of 1818, and judicial sentence was passed. I see nothing wrong in this conviction.

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extracts from his report, No. 154 E., and the officiating magistrate's, and my own proceedings on the trial and commitment for perjury, I now submit.

Mr. Beaufort in his *roobukaree* of 6th March 1852, recorded that he went to Julma to make inquiries into the cause of the frequency of river dacoities, and directed the attendance of neighbours. Subsequently he took the evidence of two Buduns, three Ramchands, Puncharam, Joogulkissore, Neelmonee, Bugerut, Ruttun, Fuqeer Chand, Soobul, two Gores, Ramcoomar, Sombo, Lochun, Anund, Kuney, Ramjoy, Bunsee, Brijo, Adoo, Dusrut, Baboo and Anund; and on the same date passed an order on the back of the evidence of the last-named person, for the apprehension of Yasin and others of Beerat, named by these neighbours as suspected of dacoity.

On 8th March, Kefatoolla, Bholai, Hisamdee and Motook, inhabitants of Beerat, gave evidence against the persons so accused; but, subsequently, when confronted with the prisoners, on 31st August, denied on oath what they had before asserted on oath.

PRESENT :

A. J. M. MILLS, AND R. H. MYTTON, } ESQRS., *Officiating Judges.*

SREEMUTTY ADOOREE

versus

BUNMALEE HAJRA (No. 1), KISSUB HAJRA (No. 2), KISHTO HAJRA (No. 3), PREM HAJRA (No. 4), NUBO KISHTO SAWUNT (No. 5), SREEDHUR SAWUNT (No. 6), HULODHUR SAWUNT (No. 7), MUDUN DHUL (No. 8), TARA CHAND SAWUNT DIGWAR (No. 9), SOHURIA SAWUNT (No. 10) AND GOKOOL SAWUNT (No. 11).

MIDNAPORE.

1853.

January 10.

Case of BUNMALEE HAJRA and others.

Murder of a *gomashta* by *ryots.* Sentence on two, death. Ditto ditto, one, transportation. Ditto ditto, two, fourteen years' imprisonment.

What is considered sufficient proof of the *corpus delecti* to warrant a sentence of death.

CRIME CHARGED.—1st count, wilful murder (by severe beating) of Mudhoo Bhooya, husband of prosecutrix ; 2nd count, aiding and abetting in the above crime ; and 3rd count, privity to the above crime.

Committing Officer, Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 17th November 1852.

Remarks by the sessions judge.—The particulars of this trial are as follows :

The deceased Mudhoo Bhooya proceeded on the afternoon of Friday, 29th of October, to the village of Mutta Surra, accompanied by the prisoner Gokool Sawunt (No. 11), and he was seen the same evening returning with the said prisoner in the direction of his home, close to the house of the prisoners Nos. 1, 2, 3 and 4, after which all traces of him ceased. On the 1st November the zemindar informed the darogah that Mudhoo Bhooya, his *surburakar*, was missing from his village of Bara Mara, and as he was at enmity with the villagers, he suspected that they had made away with him. The prosecutrix Musst. Adooree, the wife of the deceased, also stated that her husband had left his home on the afternoon of the 29th October ; that she had traced him on his return as far as the house of the prisoner Bunmalee (No. 1) which he reached at two *ghurries* of the night, and beyond that spot she could gain no tidings of him. She further deposed that on the morning of the 29th October, her husband had had a dispute with Bunmalee and his brothers, about rent, and that she consequently suspected her husband had been made away with by them.

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Case of BUNMALEE HAJRA and others.

The darogah on this information, searched the house of the prisoners Nos. 1, 2, 3 and 4, who all live together, and found in it two sticks* with marks of blood upon them, and under a *toolsee* tree, in front of the house, three pieces of a bead necklace which the prosecutrix identified as that worn by her husband when she last saw him. Close to the *toolsee* tree the darogah also discovered several foot-marks and indications of a heavy substance having been dragged along; in following these up he found they continued to the banks of the Sellai River, which is about fifty beegahs to the East of the prisoners' house, where they were lost.

The prisoners Nos. 2 and 3, when arrested on the 2nd November, at first denied all knowledge of the murder, but on the prisoner No. 5, Nubo Kishto Sawunt, confessing the following day, they likewise admitted that the deceased had come to their house at two *ghurries* of the night, and whilst seated smoking in the verandah, they had all fallen upon and strangled him by squeezing his neck between two pieces of stick; that they had then taken his body down to the river which was about three parts full and thrown it into the water. The fore-finger of the prisoner Kissub Hajra (No. 2) bore the mark of a recent wound, which he accounted for by stating that the deceased had bitten it, whilst he (prisoner) was endeavouring, as he says, to remove the sticks from the neck of the deceased. The prisoners No. 4, Prem Hajra and No. 6, Sreedhur, likewise confessed to their having witnessed the murder at Bunmalee's house, to the fact of the body being thrown into the Sullai River, and to their absconding from their village at the instigation of the other prisoners. The prisoners Nos. 2, 3, 4 and 5, repeat their confessions before the magistrate. In this court they all plead "*not* "*guilty*" and set up *alibis* in defence.

The witness Pelaram Sawunt, whom the magistrate judiciously made a Queen's evidence, deposes that on the night of Friday, the 29th of October, the whole of the prisoners Nos. 1 to 11, were seated in front of the prisoner Bunmalee's house, in company with the deceased Mudhoo Bhooya; that with one accord they suddenly seized hold of him, threw him on the ground, beat him, and squeezed his neck between two pieces of stick, which caused his immediate death. He further deposes that the prisoners then carried the body to the river and threw it in the water; that he, witness, then returned to his home, where he was afterwards visited by the prisoner Mudun Dhul (No. 8) who desired him to abscond, and that accordingly he fled to the village of Kootubpore, where he was arrested.

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* One of these sticks is a split bamboo, three feet long and weighs about one and a half seer, the other is a close-grained stick, three feet long, weighing about a seer.

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This evidence is corroborated in all material points by the witness Sreemutee Doyah,* the wife of the prisoner Bunmalee (No. 1), and his sister, witness Sreemutee Koonjee. Other witnesses depose to the discovery of the necklace belonging to deceased in three pieces under the *toolsee* tree in front of Bunmalee's house, the marks on the ground of a scuffle having occurred at that spot amongst several persons, and of their foot-steps proceeding in the direction of the river. They likewise depose to enmity having existed between the prisoners and the deceased for some time past, owing to the oppressive manner in which he exacted from them *abwab* and other illegal cesses, which statement is corroborated in the prisoners' confessions, wherein they state they had conspired in the month of Assin, to do that which they subsequently accomplished in Kartick.

The deceased, who was related to all the prisoners, was formerly a *mookhia* in the village and was raised to the post of *surburakar* by the zemindar. Since that period his conduct towards the *ryots* seems to have been oppressive, and to have excited the hatred and revenge that led them to conspire to rid themselves of so tyrannical and obnoxious an agent.

The village police, the prisoners Hulodhur Sawunt Mookhia (No. 7), Mudun Dhul (No. 8) and Tara Chand (No. 9), chowkeedars, were no doubt prime movers in the conspiracy. At all events they took a prominent part in the murder and prevented any intimation being given at the thanna, so that nothing was consequently known of it until the zemindar, two days afterwards, learnt that his servant was missing and reported the circumstance to the darogah.†

The evidence against them is in my opinion quite conclusive of their guilt of having murdered the deceased ; but it does not tend to prove by whose hand the fatal blow was inflicted that deprived the deceased of life. All the prisoners appear to have been equally active in seizing and killing the deceased and throwing his body into the water, and they are all therefore deserving of the same degree of punishment.

The assessors with whose aid the trial was held, declare all the prisoners from Nos. 1 to 11, guilty of the second and third counts of the charge. I concur in this finding in respect to the second count, that they are guilty of aiding and abetting as accomplices in the murder of the deceased Mudun Bhooya, but as there is no *corpus delecti*, all search for the body having proved fruitless, it would be unsafe to carry out the extreme penalty of the law which the pri-

* The prosecutrix gives the same statement in this court, as she made before the darogah and the magistrate, without any prevarication or contradiction whatever.

† The plea of the prisoners set up in defence in this court, differs from that urged by them before the darogah and magistrate, and they altogether fail to establish it.

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soners have justly incurred. Short of that however they are deserving, in my opinion, of the severest punishment that can be awarded. I accordingly recommend that they be sentenced to imprisonment for life, in transportation.

Remarks by the Nizamut Adawlut.—(Present: Messrs A. J. M. Mills and R. H. Mytton.)—This is admitted by some of the offenders to have been a murder, premeditated for a month previous to its perpetration, of a *gomashta,* on account of extortionate conduct. No specific acts of cruelty or oppression are proved to have been committed by him, nor indeed have any been pleaded by the confessing prisoners in palliation.

It is a case which calls for condign punishment. The reason for abstaining from a capital sentence suggested by the sessions judge, is insufficient, inasmuch as it is admitted by the confessing prisoners that the *gomashta* is dead, and the marks observed on the edge of the river, afford strong presumptive corroboration of the fact stated in the confession, that the body was thrown into the river. No reasonable doubt of the fact of the deceased having been murdered can exist.

The evidence of the approver has not been obtained in a proper manner, but it is not on this account inadmissible. However the story told by him to account for his knowledge of the circumstances is not a natural one, and it is clear that he has not revealed the whole truth. His evidence therefore cannot, except on points otherwise satisfactorily corroborated, be trusted. The evidence of the two women as to who the parties were sitting on the *dahleez,* when the deceased was seized and strangled, is not such as can be depended on, for they say that they were at that time inside the homestead cooking, and were not permitted to come outside by Nubokishto. One of them, Doya, indeed states, that she saw them, as she went inside to wash the cooking-pots; but at the same time states that it was dark. It has not been elicited from Koonjee, how and when she recognized the prisoners. It is not probable that either of the women could have done so from the inside of the homestead, as it is presumed that the *dahleez,* like all other such houses, opens and faces outwards.

For the above reasons, Nos. 1, 7, 8, 9, 10 and 11, who are implicated merely by the depositions of the above noted three witnesses, are acquitted.

The prisoners No. 2, Kissub, No. 3, Kishto and No. 5, Nubo Kishto, admitted their presence, in their confessions to the darogah and magistrate. The two first admitted that they were of the counsel to kill the deceased. The murder took place at the house, the murderers assembled there for the purpose, the instruments with which the murder was committed were found in their house, the approver swears that they were the persons who strangled the deceased.

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This is corroborated by the confessions of others, who point to them as the most active. The proof, both positive and presumptive, is strong against them as being the principal offenders, and there is no circumstance to bar a capital sentence against *them*.

No. 5, Nobokishto, is proved by the female witnesses to have prevented their coming out when the scuffle took place. The approver deposes that he gave the signal to fall on, and his own confession to the effect that he was with the deceased and left him to return home, and the subsequent circumstances, lead to the inference that he gave the others notice of the probability of the deceased passing that way. He however was the first to reveal any of the particulars of the murder, therefore his life should, in our opinion, be spared.

The remaining prisoners, No. 4, Prem, and No. 6, Sreedhur, were by their own admission present, and from the deposition of the approver, and from their having immediately after the occurrence absconded to a distance, their presence can only be considered as that of accomplices. They are however young, and the severest possible example is made of the brothers of one, and the father of the other as sentenced to transportation for life. A less severe sentence than that against Nubokishto, will therefore, in our opinion, answer the ends of justice as regards them.

Kisub (No. 2) and Kishto (No. 3) are sentenced to suffer death.
Nubokishto (No. 5) is sentenced to transportation for life.

Prem (No. 4) }
Sreedhur (No. 6) } Ditto to fourteen (14) years' imprisonment.

It has already been observed that the others are acquitted.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

REVEREND J. E. W. ROTTON

versus

MOUNGTOO (No. 2) AND MEE KHYIKE (No. 3).

ARRAKAN.

1853.

January 11.

Case of MOUNGTOO and another.

A prisoner convicted of knowingly having stolen property in possession, acquitted on appeal, no guilty knowledge being inferrible from the facts. Sentence of two years' imprisonment on another, confirmed.

CRIME CHARGED.—Possessing stolen property, knowing the same to be stolen.

CRIME ESTABLISHED.—Possessing stolen property, knowing the same to be stolen.

Committing Officer, Captain S. R. Tickell, principal assistant commissioner of Akyab, Arrakan.

Tried before Captain A. P. Phayre, commissioner of Arrakan, on the 24th August 1852.

Remarks by the Commissioner.—Moungtoo is found guilty of possessing stolen property, knowing the same to be stolen. The stolen property in this case exceeded the value of rupees 300; and as he is committed in another case, sentence is reserved.

Mee Khyike is found guilty of possessing stolen property, knowing the same to be stolen. The property is a portion of articles stolen on the night of the 21st May 1852, or early on the following morning, from the house of the Reverend John Rotton, in the station of Akyab, and was found concealed on the person of this prisoner on the 17th June 1852. A portion of the property was at the same time found in the house where prisoner Moungtoo lived, on his sleeping mat. This prisoner's wife is the grand-daughter of Mee Khyike. The latter prisoner on account of her great age was not sentenced to labor.

Prisoners were tried under Regulation VI. of 1824, Section IV.

Sentence passed by the lower court.—No. 2, seven (7) years' imprisonment, with labor and irons, being a consolidated sentence for offences in this and in the following case, (*vide* case *of* Pho-go-la and others) and No. 3, two (2) years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—Both the prisoners in this case have appealed. The facts, on which they have been convicted, are that on search, a piece of satin, which had been stolen from the prosecutor, was found concealed on Mee Khyike, and another piece of it made up into an *angee*, lying on a mat in the house of the other prisoner, Moungtoo. The concealment of the satin, which is admitted by Mee Khyike, evinces her guilty knowledge, but no such guilty knowledge is apparent on the part of Moungtoo.

He stated that the *angee* had been given to his wife by Mee Khyike, her grand-mother, who admits it, and takes upon herself the responsibility for the article, by pleading that she bought the satin, which, however, she failed to establish. The conviction of Moungtoo is quashed, and the appeal of Mee Khyike rejected.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

NUNDRAM

versus

PHO-GO-LA (No. 4), MOUNGTOO (No. 5, APPELLANT) AND SHWE'-THE (No. 6).

CRIME CHARGED.—Possessing stolen property, knowing the same to be stolen, the said property having been burglariously stolen with other property to the amount of rupees 345.

CRIME ESTABLISHED.—Possessing stolen property, knowing the same to be stolen, the said property having been burglariously stolen with other property to the amount of rupees 345.

Committing Officer, Captain S. R. Tickell, principal assistant commissioner of Akyab, Arrakan.

Tried before Captain A. P. Phayre, commissioner of Arrakan, on the 30th September 1852.

Remarks by the Commissioner.—Pho-go-la is proved to have had in his possession a piece of cotton cloth, which formed a portion of property valued at rupees 345, stolen in a burglary of prosecutor's house, on the night of the 15th or morning of the 16th June 1852. The cloth was found under his sleeping mat on the morning of the 17th idem. Prisoner stated he had found the cloth in the road but failed to prove this.

Moungtoo is proved guilty. In his sleeping room, in a small box put inside a bag, were found four old rupees, one old half rupee, two old quarter rupees, one two anna piece, all with silver loops attached to them for being strung to put round the neck. These are also proved to have been a portion of the property stolen from prosecutor's house on the night above-mentioned. His defence was, that these articles were his own, and he called witnesses to prove they had seen them round his child's neck. But they failed to do so.

Shwe'-the (who lived in a room of the same house with Pho-go-la) had an old rupee, with the silver loop for stringing round the neck broken off and two old half rupees with the silver loop also broken off. These articles were found in a small Burmese box in Shwe'-the's room. They also formed a portion of the property stolen from prosecutor's house on the night above-mentioned. The old rupee, he stated in the magistrate's court, he had received from a sepoy, and that the two half rupees he bought from persons unknown. This he failed to prove.

Sentence passed by the lower court.—No. 4, three (3) years' imprisonment, with labor and irons. No. 5, seven (7) years' imprisonment, with labor and irons, being a consolidated sentence in offences in this and the previous case (*vide* case of Moungtoo and

another), and No. 6, sentence deferred till the result of another trial in which he is committed is known.

1853. January 11. Case of PHO-GO-LA and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—Moungtoo has appealed also in this case. The property, for the possession of which, knowing it to be stolen, he has been convicted, was found in his house in a place of safe keeping. He claims it as his own, but his witnesses depose that they cannot identify it. On the other hand the prosecutor and his witnesses positively swear to it. The articles have been before the commissioner's court, and the commissioner has had an opportunity of judging whether the articles (coins made into lockets) are capable of identification, and having made no observation to the contrary, it must be presumed that they are so.

I see no reason to interfere with the conviction in this case, but having acquitted the prisoner in that decided on 26th August, in which Mr. Rotton was prosecutor, the sentence upon him is reduced to three (3) years' imprisonment, with labor in irons.

PRESENT :

W. B. JACKSON, ESQ., *Judge.*

SREE RAM ROY AND GOVERNMENT

versus

ESSUR KOYBERT DOSS (No. 5), MEECHOO BAGDEE (No. 6), KISTO BAGDEE (No. 7) AND RAMESSUR ROY (No. 8).

MOORSHEDABAD. 1853. January 13. Case of ESSUR KOYBERT DOSS and others.

Plea of the prisoners convicted of dacoity, that their confessions had been extorted by force, rejected, as their confessions had been repeated by them before the magistrate.

CRIME CHARGED.—1st count, Nos. 5 to 8, dacoity in the prosecutor Sreeram Roy's house, from which property valued at rupees 841-8-0, was plundered; 2nd count, privity to the said dacoity before and after the fact; and 3rd count, Nos. 5 and 6, having received and possessed property, knowing the same to have been acquired by dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 30th September 1852.

Remarks by the sessions judge.—On the night of the 24th July 1852, a dacoity was committed in the prosecutor's house, from which property to the value of rupees 841-8-0, was plundered. The prosecutor recognized the prisoners Ramessur Roy and Madhob Telee, whom he knew before. Babooram and Punchoo Chowkeedar, two witnesses, swore to their having recognized Ramessur Roy, Essur Koybert, Meechoo Bagdee, Kisto Bagdee and Ramessur Roy, who confessed their guilt both in the Mofussil and before the

1853.

January 13.

Case of Essur Koybert Doss and others.

magistrate. They denied the charge in the sessions court and in their defence alleged that their confessions had been extorted by ill-treatment, and that they were induced by the police to repeat their confessions before the magistrate, but there was no evidence to prove this. Their confessions were established by the attesting witnesses in this court and there are no grounds to induce a belief that they were not given voluntarily. The confession of the prisoner Ramessur Roy was confirmed by the evidence of two eye-witnesses to the fact of the dacoity. He is well to do in the world and his object could only have been revenge. The prosecutor is his relation and had twice failed in substantiating complaints which he had brought against him in the magistrate's court. There was evidently ill-will between them, which might have induced the prosecutor to prefer a false charge, but as there was nothing to prove that the charge was false, and as I do not think a man in the position of the prisoner would have made the confession before the magistrate had the case been got up, I sentenced him and the other prisoners as stated in the proper column.

Sentence passed by the lower court.—Each eight (8) years' imprisonment, with labor in irons, in banishment, and a fine of rupees 201-6-3, as a portion of the compensation awarded to the prosecutor, or quarter of the amount plundered, under Act XVI. of 1850.

Remarks by the Nizamut Adawlut.—(Present : Mr. W. B. Jackson.)—The four prisoners Essur Koybert, Meechoo Bagdee, Kisto Bagdee and Ramessur Roy, all confessed before the magistrate. The plea that they now set up that the darogah forced them to confess, besides not being proved, is therefore inadmissible, as no force or intimidation could be used by the darogah in the magistrate's presence. I see no reason to interfere.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

PERMANUND DHOBA AND GOVERNMENT

versus

MEEAJAN SHEIKH (No. 2), PEEROO SHEIKH (No. 3, APPELLANT), KHEYROO CHOWKEEDAR (No. 4) AND MUSST. JUMEERUN BEWAH (No. 5).

MOORSHEDABAD.

1853.

January 14.

Case of PEEROO SHEIKH, (appellant), and others.

The prisoner's plea in appeal being unsupported by evidence, his conviction and sentence were affirmed.

CRIME CHARGED.—1st count, Nos. 2 to 4, burglary in the house of the prosecutor Permanund Dhoba, from which property to the value of rupees 54-12-0, was stolen; 2nd count, Nos. 2, 4 and 5, privity to the aforesaid crime before and after the fact; and 3rd count, Nos. 2, 3 and 5, receiving and possessing stolen property, knowing the same to have been so acquired.

CRIME ESTABLISHED.—Nos. 3 and 4, burglary and theft; No. 5, privity to the said burglary and theft after the fact, and No. 2 knowingly possessing stolen property acquired by the said burglary and theft.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 8th November 1852.

Remarks by the sessions judge.—On the night of the 3rd Assin 1259 B. S., the prosecutor was sleeping in the verandah of his house, when about two *dunds* before dawn he got up and observed a light in the house and a hole in the wall, through which a man could pass, and that four or five men were running away. Information was given to the thanna, and on the statement of one Jadub, that stolen property was traced to the house of the prisoner Meeajan, a guard was placed there. In the meanwhile the prisoner Peeroo was taken up as he attempted to escape from it, and in his possession two stolen cloths were found, but the other portion of the property was discovered in the house of Meeajan, and a portion in a tank which was secreted and given up by the prisoner Jumeerun, who with Meeajan were accordingly arrested; and Kheyroo was taken up on suspicion, because he was not present at his post on the night of the theft.

Meeajun, Jumeerun and Kheyroo Chowkeedar, confessed their guilt at the thanna and before the magistrate, and their confessions were proved by the attesting witnesses to have been given voluntarily. The stolen property was identified by, and proved to belong to, the prosecutor; besides which other suspicious property was found out, of which one silver *hunslee* was proved to be the property of Meeajan, and the rest was confiscated to Government. It was proved during the trial that Peeroo was formerly punished on four occasions, and was a notorious bad character. The assessors, who sat in the

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Case of PEEROO SHEIKH, (appellant), and others.

trial, convicted the prisoners Peeroo and Kheyroo of burglary and theft, and Meeajan of privity to the same, and acquitted Jumeerun, considering her a woman of low intellect, who fearing that the property might be stolen, had, at the request of others, thrown it in the water, and that no charge of privity or theft could be established against her. The sessions judge convicted and sentenced the prisoners as stated in the proper column.

Sentence passed by the lower court.—No. 2, three (3) years' imprisonment, with labor and irons; No. 3, six (6) years' imprisonment, with labor and irons, in banishment; No. 4, five (5) years' imprisonment, with labor and irons, and No. 5, six (6) months' imprisonment, without irons, and a fine of rupees ten (10) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner Peeroo has appealed. He pleads that he had an intrigue with the wife of the prisoner Meeajan, which is the cause of Meeajan implicating him as a *particeps criminis* in the robbery, and that he purchased the cloths found in his possession from a hawker. His allegation is unsupported by evidence, and I see no reason to interfere. The appeal is rejected.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

PHOKUND KOCH (No. 1) AND TEETARAM KAGOTTY (No. 2).

ASSAM.

1853.

January 14.

Case of PHOKUND KOCH and another.

The sentence passed upon the prisoners, the one convicted of forgery, and the other of instigating it, was confirmed on appeal.

CRIME CHARGED.—No. 1 having caused a forged receipt for rupees 4, to be written by Teetaram, and also having presented the said forged receipt in the moonsiff's court, as a good and valid document; and No. 2 having written a forged receipt for rupees 4, and signing the same in the name of Mohun, and giving the forged receipt to No. 1, Phokund, to present in court as a good and valid document.

CRIME ESTABLISHED.—No. 1 having caused a forged receipt for rupees 4, to be written by Teetaram, and also having presented the said forged receipt in the moonsiff's court, as a good and valid document, and No. 2 having written a forged receipt for rupees 4, and signing the same in the name of Mohun, and giving the forged receipt to No. 1, Phokund, to present in court as a good and valid document.

Committing Officer, Captain J. Butler, magistrate of Nowgong, Assam.

Tried before Captain H. Vetch, deputy commissioner of Assam, on the 23rd July 1852.

Remarks by the deputy commissioner.—The jury returned a verdict of *guilty* against both prisoners of the charges preferred against them, in which the magistrate concurred, and recommended that the prisoners be each sentenced to five (5) years' imprisonment, with labor.

1853.

January 14.

Case of PHOKUND KOCH and another.

This court found the prisoners guilty of the charges as severally preferred against them.

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor and without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Both prisoners have appealed. The charges preferred against them respectively are held to be clearly and distinctly proved by the moonsiff, who first sent the case to the magistrate, by the magistrate himself, in concurrence with a jury of three persons and by the deputy commissioner. On perusal of the records, I concur in this finding and confirm the sentence.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

POONAE GOALLA

versus

TOONAH GOALLA.

PATNA.

1853.

January 14.

Case of TOONAH GOALLA.

The prisoner was sentenced for rape, on a girl ten years of age. Sentence, imprisonment, with labor and irons, for seven years.

CRIME CHARGED.—Rape.

Committing Officer, Mr. F. A. Vincent, deputy magistrate of Barh, Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 4th December 1852.

Remarks by the sessions judge.—Pooney, the father of the girl, deposed that having been informed by the witness Pokhun, that his daughter, only ten years of age, was lying insensible on the bank of a tank, he proceeded immediately to the spot indicated, and found her in the state described; that after he had brought her to his home she said the prisoner had abused her. Sibya, the mother of the girl, corroborated this evidence, and declared that she had satisfied herself that her daughter's person had been violated.

Pokhun also corroborated the prosecutor's evidence, and deposed that he had seen the prisoner drag the girl by the hand to the tank, and leave her there; after which she told witness that the prisoner had abused her.

Punchoo deposed that he was grazing cattle in the same place with the prisoner Toonah, and saw him after dark dragging the girl by the hand, who was shrieking and her clothes bloody; and on questioning the prisoner he confessed that he used violence towards Etwareeah and violated her.

1853.

January 14.

Case of TOONAH GOALLA.

Sobha deposed to having seen the prosecutor taking home the child on the evening mentioned by the other witnesses, and the prosecutor in reply to his question said that the prisoner had violated his child.

Ahmanee Lall and Sukheenarain proved the confession of the prisoner before the deputy magistrate to the purport, that he had committed adultery with her with her consent.

Etwareeah appearing to be sufficiently sensible of the nature and obligation of an oath was examined, and accused the prisoner of having abused her by violence.

In his defence the prisoner admitted the adultery, but pleaded the consent and solicitation of the girl.

I agree with the jury in their view of the extreme improbability of consent on the part of the girl, from the evidence of her immature age in the testimony of her parents, the effect with which the violence was attended, and her appearance in court. The facts moreover of her having been seen after the occurrence screaming and being dragged along by the prisoner, and of her accusing him of the violence as soon as she had an opportunity, corroborate her positive testimony to the violence given before this court. Having no doubt therefore as to the guilt of the prisoner, and the crime being greatly aggravated by the circumstance of the tender age of the girl, I recommend that he be sentenced to fourteen (14) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The evidence of the witnesses, and especially that of the girl Etwareeah, establishes against the prisoner Toonah that he committed a rape on the girl Etwareeah, aged ten years. I convict him of the crime charged and sentence him to imprisonment, with labor and irons, for seven (7) years.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND MUSST. DOOMOSI *versus* SUNTHO RAM NUDIAL.

ASSAM.

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Case of SUNTHO RAM NUDIAL.

The appeal was rejected, the court remarking that although they considered the murderous intent proved, the sentence could not be enhanced.

CRIME CHARGED.—Wounding with intent to murder.

CRIME ESTABLISHED.—Wounding.

Committing Officer, Lieutenant W. Agnew, officiating magistrate of Gowalparah, Assam.

Tried before Captain H. Vetch, officiating deputy commissioner of Assam, on the 28th September 1852.

Remarks by the officiating deputy commissioner.—In this case it appears from the deposition of the prosecutrix, that on the evening of the 25th July, while she was engaged in preparing the evening meal for her family, the prisoner, who is on bad terms with her husband, attacked her, and with a knife endeavoured to cut her throat, but from her resisting, he did not succeed, but wounded her in four places. The civil surgeon describes these wounds; the largest and most severe was situated over the left parietal bone of the head, of a semilunar form, extending down to the bone, and about three inches in length; that the others, as compared with it, were trifling; one was situated about the centre of the left arm; the third on the right hand thumb, and the fourth over the top of the nose: both these last were trifling. The prisoner pleaded "*not guilty.*"

The only persons present at the time were the children of the prosecutrix, one said to be five, and the other three years' old, the elder happened to be in the magistrate's court, but not summoned as a witness, was called up and asked who had cut his mother, when he replied the prisoner, and pointed him out from among several bye-standers. Four witnesses depose to seeing the prisoner making off from the vicinity of the prosecutrix's house after the alarm made by her cries. A knife found in the prisoner's house, is stated by the prosecutrix to be the one with which the wounds were inflicted. The surgeon in his deposition did not consider the wounds of themselves to be dangerous, or that they had been inflicted with a murderous intent, otherwise more fatal parts would have been selected. The prisoner called six witnesses to prove an *alibi.* The jury convict the prisoner of simple wounding, while the magistrate is of opinion that he is guilty of the crime laid to his charge; and in support of this, stated there can be no doubt of the crime being premeditated as follows:

"There can be no doubt of the act being premeditated: indeed, every thing proves that the affair was planned. The time was the very best that could have been chosen for the purpose; had the

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time been earlier it would have been so light that the prisoner could not have hoped to escape observation; if later, prosecutrix's husband, who is a bazar *tehsildar*, would have been home. The precautions too, to have respectable witnesses to prove an *alibi*, were taken with care, and evident forethought. Premeditation is therefore proved; and that the purpose was deadly, I have no doubt, from the description of weapon that must have been used, a sharp-cutting instrument. Had the prisoner's object been merely to inflict chastisement on the prosecutrix, some less dangerous weapon could surely be employed for this purpose."

Considering therefore that the prisoner is guilty of the crime of wounding with the intention to murder, and as there are no extenuating circumstances to be urged in his favor, he begs to recommend that a sentence of fourteen (14) years' imprisonment, with labor in irons, be awarded to him.

After a careful consideration of all the bearings of the case, and the circumstance of the wounds not being in places likely to have led to fatal results, I acquit the prisoner of so much of the charge as the words with intent to "commit murder," and I convict him of wounding attended with aggravating circumstances of premeditated revenge, and that on a defenceless woman. I sentence him to seven (7) years' imprisonment, with hard labor, in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner has appealed. In his petition he urges an *alibi*, and attributes the accusation to enmity. The *alibi* is not established, enmity is admitted, and stated to be the impelling motive to the crime. The guilt of the prisoner is clearly established, and the presumption is strong that he intended to kill the deceased. The prosecutrix states, that he endeavoured to cut her throat and that she threw herself on the ground, with her face downwards, and put her hands around her neck and throat to prevent him from effecting this object. I see no reason to doubt her testimony, or that this resistance, aided by the darkness, saved her life. The murderous intent is also inferrible from the nature of the instrument used and the time and place of the occurrence. The prisoner is, however, only found guilty of wounding, and as I cannot increase the punishment, I confirm the sentence.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT AND GOMANY SHEIKH, KIDMUTGAR

versus

LUCHMUN ROWANY BEARER (No. 1), SHEONARAIN ALIAS SHOHUN BUHLIA (No. 2, APPELLANT), JOGEE ALIAS JUKHOO BUHLIA (No. 3), SHAMLALL AHEER (No. 4, APPELLANT) AND SHOOKLALL SYCE (No. 5, APPELLANT).

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Case of SHEONARAIN *alias* SHOHUN BUHLIA, (appellant), and others.

Burglary and theft of property, valued at rupees 3,438. Sentence of seven years' imprisonment, confirmed on appeal.

CRIME CHARGED.—1st count, Nos. 1 to 5, theft of property, valued at rupees 3,438, belonging to Shahibzada Kootoobdeen ; 2nd count, Nos. 1 to 4, accomplices in the above crime ; 3rd count, No. 5, accessary to the above crime before its perpetration ; and 4th count, Nos. 1 to 4, receiving portions of the above property, knowing them to have been stolen.

CRIME ESTABLISHED.—Nos. 1 to 4, accomplices in theft ; and No. 5, accessary to theft before its perpetration.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 12th November 1852.

Remarks by the sessions judge.—The prosecutor was a servant in the employ of Kootoobdeen Shazada at Russapugla, and deposed to the fact of a robbery having been committed in his master's house one night in the month of Sawun last (the particular date not remembered), one of the doors having been forcibly opened and two almirahs removed outside, from which property, consisting of cash, clothes and silver articles, were abstracted and a clock, the whole being valued at about rupees 3,438. It appeared that one Bolakee had been previously invited by prisoner No. 2, Sheonarain, to join in a thieving expedition. After this robbery had occurred, witness No. 20, Nunkoo Tewary, burkundauz, had mentioned to one Matudeen as well as several other persons, that a reward would be given to any person by whose means the perpetrators of the robbery should be discovered and apprehended. This Matudeen fell in with Bolakee, who gave him some information which was communicated to Nunkoo Tewary, and led to the apprehension of prisoner No. 2, Sheonarain, and all the others. The prisoners denied the charges on which they were arraigned in this court. In the Mofussil and before the magistrate prisoner No. 1, Luchmum Rowany bearer, No. 2, Sheonarain *alias* Shohun Buhli, No. 3, Jogee *alias* Jukhoo Buhlia, No. 4, Shamlall Aheer, admitted their complicity. In the Mofussil prisoner No. 5, Shooklall, syce, admitted his being an accessary before the fact, but denied his guilt before the magistrate. Witnesses deposed

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to the discovery of a *chupkun* in the possession of prisoner No. 1, Luchmun, Rowany bearer, and also of prisoner No. 4, Shamlall Aheer, which were recognised as the property of the prosecutor's master. Sundry articles, consisting of rupees and clothes, were found in the possession of prisoners Nos. 2 and 3, Sheonarain and Jogee. It was proved also, as indeed admitted by prisoner No. 5, Shooklall, syce, in the Mofussil, that the prisoner No. 3, Jogee, had previous to the robbery, some private conversation with prisoner No. 5, Shooklall, syce, both in the China Bazar, and at the premises of his (prisoner No. 5's) master. Prisoner No. 1, Luchmun, Rowany bearer, No. 2, Sheonarain, and No. 3, Jogee, cited witnesses to prove an *alibi*. Prisoner No. 4, Shamlall Aheer, cited witnesses to prove that the *chupkun*, No. 16, belonged to him. Prisoner No. 5, Shooklall, syce, cited witnesses to prove that he was sleeping with the other syces on the night of the theft, who would also depose to his good character. Nothing however was elicited in their favor. I concurred with the law officer in convicting prisoners, Nos. 1 to 4 on the 2nd count, and prisoner No. 5, Shooklall, syce, on the 3rd count, and sentenced them to imprisonment.

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—Prisoners Nos. 2, 4 and 5 have appealed. No. 2 on the ground that the property found in his possession has not been identified; No. 4, that he was elsewhere at the time, and that the witnesses cited by him were not sent for, while those sent in were not his witnesses; and No. 5, that the darogah unjustly sent him in, because he threatened to complain of his not paying the hire of a carriage. The only plea worthy of notice is that of No. 4, but that is shown by the record to be false. Out of three witnesses cited by him on commitment, two were sent in and examined by the prisoner himself, and one other witness cited by him on trial was summoned by the sessions judge and examined. The prisoners have been convicted on most conclusive proof, and the sentence passed against them is not more severe than the crime called for. The appeal of the prisoners is rejected.

PRESENT:

J. DUNBAR, Esq., *Judge.*

MUSST. MUNSAORY

versus

AFSURUDDIN.

TIPPERAH.

1853.

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Case of AFSURUDDIN.

The prisoner found guilty of rape, was sentenced to seven years' imprisonment.

CRIME CHARGED.—Rape on the person of the prosecutrix.

Committing Officer, Mr. E. Radcliffe, joint magistrate of Noakholly, Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 10th December 1852.

Remarks by the sessions judge.—The prisoner, who is described in the calendar as being 17 or 18 years of age, but who is, in all probability, a year or two older, is charged with committing a rape on the person of the prosecutrix, a married woman of 25 years of age.

He pleads "*not guilty.*"

The prosecutrix described the circumstances attending the violence effected by the prisoner, clearly but as modestly as the subject permitted. When returning home from a visit to a sick friend she was followed by the prisoner, who seized her while passing by a tank, threw her down, and succeeded, in spite of her resistance, in forcibly enjoying her person.

The witnesses Tumeezuddy and Amanoollah, Nos. 1 and 2, hearing her cries for assistance, arrived, it would appear, at the moment of full consummation; and when the prisoner quitted the prosecutrix, they observed that she was naked, and his person indecently exposed. Their evidence leaves the full completion of the act beyond a doubt, a point distinctly deposed to by the prosecutrix.

The remaining witnesses testified to the prosecutrix and prisoner having been seen on the morning in question on the bank of the tank where the violence took place, and to her person being scratched and clothes torn after the occurrence.

The prisoner confessed the offence with which he is charged fully and unreservedly, both at the thanna and before the joint magistrate.

Before me he states that his confession in the Mofussil had been extorted by violence, and that he had been induced to repeat it in the joint magistrate's court, under a hope held out to him by the burkundauz in attendance that his doing so would be beneficial to him, and that he had been forcibly taken from his own house to that of the prosecutrix's master, by the witnesses Tumeezuddy and Amanoollah, Nos. 1 and 2. To prove the latter point, three witnesses were, he said, in attendance. I pointed out to him that these

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witnessess had been summoned at his desire, to prove a totally different ground of defence to that now pleaded, namely the existence of a prior illicit intimacy between him and the prosecutrix. He replied that he had not given the reason for desiring their attendance assigned to him by the joint magistrate, and set forth in the calendar. They were accordingly examined on the plea adopted by himself, as constituting his real defence; but their evidence proved in every respect unfavorable to the prisoner's case. They knew nothing whatever of the asserted violence done to the prisoner by the witnesses Nos. 1 and 2, but had heard that he had committed rape on the person of the prosecutrix, and had been apprehended in consequence. One of these three witnesses (Assaud Bepary, No. 11,) stated, that he was called the prisoner's uncle, although it seems that no actual relationship exists between them. Another (Wassiluddy Bhooeeah, No. 12,) is connected with him by marriage.

The Mahomedan law officer found the prisoner guilty of the crime with which he is charged, and pronounced him liable to *akoobut.*

In this finding I concur. The evidence for the prosecution is clear and satisfactory; and I place no reliance in the prisoner's statement that his ample confessions were forced from him by ill-treatment, or the result of a belief improperly impressed on his mind that to confess would lead to his release. Both are proved by the witnesses present when they were made, to have been perfectly voluntary and spontaneous. In his attempted defence, the shifting nature of which is also suspicious, he has signally failed, and I would recommend his being sentenced to seven (7) years' imprisonment, with labor in irons. The evidence renders it clear that he had no previous connexion with the unfortunate woman whose character appears to have been unimpeachable.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The evidence for the prosecution is of a more certain and satisfactory character than that usually to be had in cases of rape. The fact of the prisoner having been caught in the very act of having connexion with the woman, was so clearly established, that the only plea the prisoner could have put forward, deserving of attention, would have been that she was consenting. He probably felt that such a plea would do him no good, and therefore made full confession both in the Mofussil and before the magistrate. The confessions are proved, and his subsequent statement that he had been forcibly taken from his own house, and confession extorted from him, unsupported as it is by any evidence, is wholly unworthy of credit. I convict the prisoner of the crime charged, and sentence him as recommended by the sessions judge, to imprisonment for seven (7) years, with labor in irons.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

MEDNEE MAHTO,

versus

SOOKERA (No. 3), SHEIKH EDUN (No. 4), SHEIKH NOOR ALEE (No. 5), NOOR ALEE KHAN (No. 6), HEMRAJ (No. 7), HOSAINEE KHAN (No. 8), SHEIKH KHYRATEE (No. 9), DEWA (No. 10), JAFFER (No. 11), GIND KHAN (No. 12), SHEIKH RUHEEM (No. 13), DULLEE SINGH (No. 14), SHEIKH DEENOO (No. 15), JEEBOO (No. 16), SHEIKH MUKHOO (No. 17), DOOKHEE (No. 18), BODHA (No. 19), SHEIKH NUZERA (No. 20), SHEIKH EDOO (No 21) AND SHEIKH NUJJOO (No. 22).

HAZAREEBAUGH.

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Case of SOOKERA and others.

Two prisoners were convicted on their confessions before the committing officer, all the others were acquitted, the evidence to their recognition at the commission of the dacoity, and their confessions before the police being deemed untrustworthy.

CRIME CHARGED.—1st count Nos. 3 to 22, dacoity attended with torture, wounding and other aggravating circumstances, together with plunder of property, amounting in value, to rupees 1,123-12-0; and 2nd count, Nos. 5, 12 to 14, and 19 to 21, knowingly receiving and retaining property obtained in the aforesaid dacoity.

Committing Officer, Captain T. Simpson, principal assistant to the agent Governor General, Hazareebaugh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebaugh, on the 27th November 1852.

Remarks by the deputy commissioner.—The prosecutor states, that shortly after dusk, on the evening of the 8th September last, a gang of dacoits came shouting, "*alee! alee!*" and entered his house. They laid hold of Bishnath Singh and Dhuna Singh Rajpoot, who were in the court-yard, and when the dacoits came into the house, Baluk Hajjam and the prosecutor's grand-child concealed themselves within, while the prosecutor himself escaped through a privy. Dhunnee and Roopoo got on the roof. The prosecutor's wife who was coming with a light from another house was seized and desired to point out the property. She said she could not. The dacoits then broke open the doors, and a box, and dug up the floors of two houses and took off much property. When the villagers gathered on hearing the alarm, some one of the dacoits discharged a gun loaded with shot, and thereby wounded Jankee and Soomea. The dacoits remained on the premises for a considerable time. They tore up prosecutor's papers, beat Baluk Hajjam, beat and burnt the prosecutor's wife, and then decamped to the westward.* After their departure Sahiba Gorait and Gobind were sent to the police, and they followed up the track of the dacoits westward to Maroo.

* *i. e.* towards Hazareebaugh.

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The prisoners all pleaded "*not guilty.*"

No. 1, witness Bishnath Singh, states, that in the evening the house was entered by an armed gang of dacoits who assaulted the witness, bound him with his own cloth, and burnt him with their torches. Witness was distracted and unable to recognize any of them. The witness has some trifling marks of injuries on his body.

No. 2, witness Roopoo Soory.—On a Wednesday evening, in September, about the time of lighting the lamps, witness was in the prosecutor's house, and on seeing the dacoits he got on the loft. The dacoits began to rob the house and laying hold of the prosecutor's wife, they burnt her with torches, and desired her to show the property. They entered the house with several lights, and were for a considerable time engaged in plundering it. They were armed, some with guns, some with swords, and some with staves. They fired some shots. Witness recognizes the prisoners Khyratee (No. 9), Dewa (No. 10), Deenoo (No. 15), Dookhee (No. 18) and Nujjoo (No. 22). He had seen them during the robbery by the light of the torches, at a distance of five paces. Witness proves the record of the wounds on the person of the prosecutor's wife. There were ten wounds in various parts of the body. As to having said before the police officer that he was concealed behind a grain basket, there was a grain basket in the loft, and witness was screened by it. Witness first recognized the prisoner Dewa at Sooltana, where he was taken up, and the others at the police station.

No. 3, witness Dhumee Soory.—Witness was in the prosecutor's house, when at 6½ P. M. the dacoits entered. Witness got into an upper apartment, and through a small door he saw the dacoits beat and burn the prosecutor's wife. They discharged guns within the house, and went through it in all directions. They were armed with guns and swords and had several torches. They remained in the house till 8 P. M. Witness recognizes the prisoners Khyratee (No. 9), Dewa (No. 10), Jaffer (No. 11), Deenoo (No. 15) and Dookhee (No. 18). Had never seen them before. Saw them next at the Hazareebaugh police station. As to having said before the police officer, that he had ran out and sat on the wall of the cow-house, the truth is that he did sit on the wall and not in the upper chamber. There is a beam across the cow-house, and that he called an upper chamber.

No. 4, witness Somra.—One Wednesday evening, in September, when the prosecutor's house was attacked by a gang of dacoits who came shouting, "*alee! alee!*" witness and Jankee and Sona and Bundhoo came and stood outside, where the wall of the enclosure was partly broken down, and under cover of the wall watched and saw about forty or fifty dacoits engaged in the robbery. Five men stood outside the door. There were eight or nine torches lighted, and the gang were for three hours engaged in plundering the house. Witness recognizes the prisoners, Khyratee (No. 9), Dewa (No. 10),

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Jaffer (No. 11), Jeeboo (No. 16) and Nujjoo (No. 22). Is certain that he can identify Nujjoo. Emamoodeen, whom he had recognized before, is not now present. Recognizes Khyratee, Jaffer, Jeetoo, Dewa, and has constantly recognized Nujjoo. The dacoits fired a gun and wounded Sona and Bundhoo and Joogia with shot. These had come by another road. Question by the prisoner Jaffer.—What arms had we? Answer.—*You* had a gun and a sword. Question—Did I fire the gun or hold it only? Answer.—You went about firing it.

No. 5, witness Jankee.—On the alarm of dacoity, witness came to prosecutor's house with bow and arrows and discharged some arrows, but the dacoits were inside the premises and the arrows stuck in the wall, under cover of which witness watched the dacoits coming in and out. They remained for a couple of hours till the hue and cry was raised by the neighbouring villagers. The dacoits beat and burnt Bishnath Singh. They had ten or twelve torches. Witness recognized and now identifies five prisoners, Khyratee (No. 9), Jaffer (No. 11), Deenoo (No. 15), Jeeboo (No. 16) and Dookhee (No. 18). Proves also the record of the wounds inspected on the prosecutor's wife. There were ten wounds. Witness had not previously known any of the prisoners. Did not recognize them till after their apprehension. Has besides recognized one Bukhoree, who was discharged by the magistrate.

No. 6, witness Sona came on hearing the outcry. The dacoits seeing him shouted, "slay! slay!" One fired a gun that was loaded with shot, and a grain struck witness in the lip. Witness fell, and was afterwards carried home. He recognized and now identifies two prisoners, Khyratee (No. 9) and Nujjoo (No. 22). They stood at the door. One had a gun, the other a sword. They were twenty or twenty-five paces distant from witness. It was his own people that carried him home. He lay long on the ground. The fact is that, as he told the darogah, he scampered off at once; the present tale is a mistake.

No. 7, witness Baluk Hajjam, went in the evening to the prosecutor's house, and was there, when shortly after dusk, a gang of dacoits came shouting, "*alee! alee!*" and witness, taking with him the prosecutor's son, a boy, hid in a rice basket, but was presently discovered by the dacoits, who took him out, and threatened to kill him and the boy, if he would not tell them where to find the prosecutor. They wounded witness on the right arm with a sword, and dragged him into another room, where he remained sitting, and saw them beat and burn the prosecutor's wife. They had several torches. Witness recognized four men, of whom two are present. Identifies the prisoners Khyratee (No. 9) and Deenoo (No. 15). Question.—Why did you not mention your wound to the darogah? Answer.—I did mention it. Question by the prisoner Khyratee.—How long after the dacoity did you recognize me? Answer.—A month afterwards.

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No. 8, witness Bundhoo, came with the hue and cry. Corroborates the general statements of the preceding witnesses. Recognized, among four men who stood at the door, the prisoners Khyratee (No. 9) and Nujjoo (No. 22). Was hit by a shot, and ran away. Had never seen the prisoners before.

No. 9, witness Dhuna.—When the dacoits came to the prosecutor's house, witness was in the court-yard. They seized him, brought him into the house, desired him to show the property, and kept him in restraint. They also beat and burnt the prosecutor's wife and took her into the house. There were fifty or sixty men armed with guns and swords. They fired guns outside and had seven or eight torches burning. Witness now recognizes the prisoners Khyratee (No. 9), Dewa (No. 10), Jaffer (No. 11), Deenoo (No. 15), Mukhoo (No. 17) and Dookhee (No. 18). Deenoo and Khyratee and others beat the witness. It was Khyratee who burnt the prosecutor's wife. He did so in the court-yard.

No. 10, witness Kanai Singh, is a *peada*, had been out on duty and stopped for the night at the prosecutor's village. When the alarm was made, witness went to prosecutor's house. There was a *chupprassee* of the Governor General's agent's office also present. The dacoits asked, "who are you ?" and he replied, "I am the agent's chupprassee." They said, "Don't talk to us, or we will kill you!" All the villagers fled. There were four or five dacoits outside, and others were inside the prosecutor's house. They remained for a couple of hours. Witness now recognizes three of the dacoits, Khyratee (No. 9), Jaffer (No. 11) and Dookhee (No. 18). Did not know them before, but seeing them face to face can identify them with certainty.

Witnesses.

No. 11, Munglee Khan,
" 12, Goordial Singh,
" 13, Jhubboo Ram,
" 14, Nundlall Singh,
" 15, Sujewun Lall,
" 16, Nujeeb Oolla,
" 17, Hurbhoo Singh,

—These witnesses prove the apprehension of the prisoners.

" 19. Lullit Hajjam,
" 20, Kumul Koorme,

—These prove the inspection of the wounds on the person of the prosecutor's wife. There were ten marks of blows and burns.

" 21, Mundil Gwalla,
" 22, Bhikaree Jolaha,
" 23, Teka Talee,
" 24, Doolai Gwalla,

—These prove the confessions of the prisoners Sookera (No. 3), Sheikh Edun (No. 4), Noor Alee Khan (No. 6) and Hemraj (No. 7) before the police officers.

The confession of the prisoner Sookera is to the following effect :—"I was concerned in the dacoity, so were Dookhee, Nujjoo, Edun

the less, Deenoo, Bodha, Bundhoo, Sheikh Edun, Nuzera and Khyratee, who are all people of Khirgang and Hazareebaugh. I don't know the names of the others. These thirty men committed the dacoity on the prosecutor's house. I got only a coarse piece of cloth."

The confession of the prisoner Sheikh Edun (No. 4) is to the following effect.—"I was concerned in the dacoity, so were Nuzera, Bundhoo, Bodha, Deenoo, Dookhee, Kurrum Alee, Edun the less, Nujjoo, Akbar, Peeroo, Mungloo, a Kandoo, name unknown, Noor Alee Khan, Hosainee and five others, Genda, Ruheem, Cholhai, Peeroo the elder, Bhoondoo, Nubee, Jaffer, Khyratee and his brother a dark man, Bukhoree and his son Gogla, a butcher; forty-one men committed the dacoity on the prosecutor's house."

The confession of the prisoner Noor Alee Khan (No. 6) is to the following effect.—"I and Hosainee met Deenoo on the road. He asked if we had met Khyratee, we said we had not. He then led us to a river near Maroo village, where we joined Khyratee and came into a grove at Koojoo, where we found a party of about thirty-five men whom we joined, and then committed the dacoity in the prosecutor's house. I and Hosainee kept watch outside. Khyratee's brother had a gun, Peeroo and Dookhee quarrelled on the way about the division of the spoil. Jaffer kept the cash. The property found in my house is my own."

The confession of the prisoner Hemraj (No. 7) is to the following effect.—"I was concerned in the dacoity, so were Noor Alee Khan, Hosainee, Hydera, Jeebooa, Doolee, and his two nephews, Jaffer, Nubbee, Mudrooa, Khyratee and his brother Emamdeen and Dookhee and Deenoo. Forty-one men under Khyratee Sirdar committed the dacoity. It was Emamdeen who called me."

The confession of the prisoner Hosainee (No. 8) is to the following effect.—"I was concerned in the dacoity, so were Noor Alee Khan, Khyratee, Jaffer and others. Noor Alee and I stood outside the prosecutor's house."

Witnesses

No. 25, Choa Chowdry, ,, 26, Jugroo Hulwae, ,, 28, Jugdum Singh, } Prove the confessions before the principal assistant of the prisoners Sookera (No. 3) and Sheikh Edun (No. 4.)

The confession of the prisoner Sookera (No. 3) is to the effect that he, with Dewa, Peeroo, Mukhoo, Nujjoo, Edoo, Akbar, Deenoo, Dookhee, Kurm Alee, Bodhoo, Bundhoo and Nuzera, committed the dacoity on the prosecutor's house.

The confession of tho prisoner Sheikh Edun (No. 4) is to the effect that he, with Dookhee, Mukhoo, Deenoo, Nujjoo, Akbar, Bundhoo, Peeroo, Noorun, Edoo, Hosainee, Noor Alee Khan, Jaffer, Koorban, Khyratee, Hemraj, Bhoondoo, Nubee, Bukhoree, Gogla butcher, in all about forty men, committed the dacoity in the house of the prosecutor.

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The several witnesses from Nos. 30 to 50, inclusive, prove the finding of various articles of property, with the several prisoners. That is to say—

In the house of, or with the prisoners.	The articles numbered.
No. 3 Sookera, ...	No. 12.
„ 4 Edun, ...	No. 13.
„ 5 Noor Alee Sheikh, ...	Nos. 1 to 11.
„ 6 Noor Alee Khan,...	Nos. 59 to 65.
„ 9 Khyratee, ...	No. 28.
„ 10 Dewa, ...	Nos. 20 to 27.
„ 11 Jaffer, ...	Nos. 31 to 34.
„ 12 Gind, ...	Nos. 15 to 16.
„ 13 Ruheem, ...	No. 14.
„ 14 Dullee,...	Nos. 17 to 19.
„ 15 Deeno, ...	Nos. 67 to 72, found in a river, (*see* the evidence on this point below).
„ 17 Mukhoo, ...	Nos. 50 to 54.
„ 18 Dookhee, ...	Nos. 57 and 58.
„ 19 Bodha, ...	Nos. 42 and 43.
„ 20 Nuzera, ...	Nos. 44 to 49.
„ 21 Edoo, ...	Nos. 55 and 56.
„ 22 Nujjoo, ...	Nos. 35 to 41.

Witness No. 30, Sitae Chowkeedar.—On a Friday evening, in Bhadoon (10th September), Kunthee Pande told witness that the prisoners Deenoo (No. 15) and Dookhee (No. 18) had hid some property in some bushes in the bed of a river. Witness went with Kunthee, took the property from its place and brought it to the police station at Hazareebaugh. (Note—these are the articles Nos. 67 to 72).

Witness No. 32 Kunthee Pande.—One Saturday, saw the prisoners Deenoo and Dookhee hiding some property in the bed of a river. Deenoo stood above on the bank, and Dookhee below. Witness then meeting Kunthee Talee, desired him to call the chowkeedar.

Witness No. 52, Kunthee Talee, corroborates the preceding statements.

No. 54, witness Ramdial Gwalla, states—That when the police came to Chichi, the prisoner Sheikh Noor Alee (No. 5) brought to witness two small brass vessels, a cloth, and a piece of a woman's dress, and begged of him to conceal them, which witness would not do, prisoner then threw them down, and witness took them to the police officer.

No. 55, witness Khedoo Gwalla.—In the evening when the police came to his village, witness saw Sheikh Noor Alee put some things in the enclosure of witness's house. Witness desired him

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to stop, but he ran off, and witness took the things to the police. They are Nos. 3 to 7 of the list.

No. 56, Naido Singh Goonjhoo.—On the morning of the dacoity, witness followed the track of the dacoits to the Doodhee river, where he found two canvas bags and other things; and thence he traced the dacoits on to Morangee village, being in a direction towards Hazareebaugh.

The prisoner Sookera (No. 3) in his defence states—That he did not commit the dacoity, but that he went with Peeroo and others as a porter. They robbed the prosecutor's house while prisoner stayed in a grove near the village. Prisoner afterwards told his employer Peeroo that had he known of the intended robbery, he should not have gone.

The prisoner Sheikh Edun (No. 4) in his defence states—That he was instructed by the darogah, and was beaten and compelled to confess and to name the other prisoners.

The prisoner Sheikh Noor Alee (No. 5) in his defence says—That the prisoners Sookera and Edun were compelled by the police officers to name him. He has no other defence.

The prisoner Noor Alee Khan (No. 6) in his defence says—That he did not make confession before the police. The witnesses who have proved it are at enmity with him.

The prisoner Hemraj (No. 7) in his defence states—That his confession was extorted, and the witnesses are at enmity with him.

The prisoner Hosainee Khan (No. 8) makes a similar defence.

The prisoner Khyratee (No. 9) in his defence states—That he was at home at the time of the dacoity, as his witness will prove.

The prisoner Dewa Khandoo (No. 10) in his defence states—That on the night of the dacoity, he was in Sarloo village, and that the property found in his house is his own. Gobind Sooree beat him severely to make him confess, and offered him ten rupees if he would implicate Khyratee, but he would not.

The prisoner Jaffer (No. 11) in his defence states—That he and Domun Hajjam live in houses that adjoin within the same inclosure; that Domun had gone to Ranchee, leaving his door locked, and that the lock was broken open and some things taken out, which had been left there by Chumun's mother. An iron pan found in prisoner's own house is his own. A short drawers and cloth the prosecutor at first claimed, and afterwards denied.

The prisoner Gind Khan (No. 12) in his defence states—That the things found in his house are his own.

The prisoner Sheikh Ruheem (No. 13) in his defence states—That a cloth found in his house is his own.

The prisoner Dullee Singh (No. 14) in his defence states—That on the night of the dacoity, he was at Sookun Dhobee's. The goods found in his house are his own. Prosecutor and others offered him fifteen rupees if he would name Khyratee.

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The prisoner Sheikh Deenoo (No. 15) in his defence states—That on the night of the dacoity he was in his own house.

The prisoner Jeeboo Talee (No. 16) in his defence states—That on the night of the dacoity he was in his own house.

The prisoner Sheikh Mukhoo (No. 17) in his defence states—That on the night of the dacoity he was in his own house (his own property).

The prisoner Dookhee Chulchera (No. 18) in his defence states—That on the night of the dacoity he returned at 7 P. M. from Oomrali Chukchera to his own house where he remained all night. The goods found in his house are his own.

The prisoner Bodha Jolaha (No. 19) in his defence states—That the property found in his house is his own.

The prisoner Sheikh Nuzera (No. 20) in his defence states—That the property found in his house is his own.

The prisoner Sheikh Edoo (No. 21) in his defence states—That the property found in his house is his own.

The prisoner Sheikh Nujjoo (No. 22) in his defence states—That the property found in his house is his own.

For the defence of the prisoner Noor Alee Khan (No. 6) two witnesses depose—That the articles found in the prisoner's house belong to him.

For the defence of the prisoner Hosainee (No. 8) four witnesses depose—That during the first fifteen days of the second month of Bhadoon, the prisoner was employed cutting grain for Bhola Khan, at Roomee village.

For the defence of the prisoner Khyratee (No. 9) two witnesses state—That one evening in Bhadoon, they saw him receive a rupee from Peerbux. One witness states, that on Tuesday night, at 11 P. M., he called at the prisoner's house, and was answered by some one, he does not know who. One witness states, that an old padlock found in the prisoner's house belongs to the prisoner.

For the defence of the prisoner Dewa Kandoo (No. 10) two witnesses state, that they know nothing about him.

For the defence of the prisoner Jaffer (No. 11) one witness states—That an iron vessel found in the prisoner's house belongs to him; and one witness states, that at 8 P. M., one Wednesday evening, in 2nd Bhadoon, the prisoner was in the bazar at Hazareebaugh.

For the defence of the prisoner Gind Khan (No. 12) one witness states—That the property found in the prisoner's house belongs to him; and two witnesses state, that one Wednesday evening in Bhadoon, the prisoner was at Boodhoo Gorait's house.

For the defence of the prisoner Sheikh Ruheem (No. 13) two witnesses state—That one Wednesday evening, in Bhadoon, prisoner was at Boodhoo Gorait's house; and two witnesses state, that the property found in the prisoner's house is his own.

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For the defence of the prisoner Dullee (No. 14) two witnesses state—That one Wednesday evening, in Bhadoon, the day of the dacoity, the prisoner was at Tekun Dhobee's house, and remained there for some hours. Four witnesses state, that the property found in prisoner's house belongs to him ; and one witness states, that the prisoner was beaten by a burkundauz of the Hazareebaugh police.

For the defence of the prisoner Sheikh Deenoo (No. 15) one witness states—That one Wednesday, he met the prisoner at 4 P. M. ; and one witness states, that one Wednesday in Bhadoon 2nd, he met prisoner at Khirgong.

For the defence of the prisoner Jeeboo Talee (No. 16) one witness states—That one Wednesday, in Bhadoon 2nd, at sun-set he saw the prisoner carrying some grain in a basket.

For the defence of the prisoner Sheikh Mukhoo (No. 17) two witnesses state—That the property found in prisoner's house is his own ; two witnesses state, that on a Wednesday in Bhadoon, at 5 P. M., prisoner was at home.

For the defence of the prisoner Dookhee (No. 18) two witnesses state—That the things found in prisoner's house, are his own ; two witnesses state, that on a Wednesday in Bhadoon, prisoner was at Oomralee Chulchera's house.

For the defence of the prisoner Bodha Jolaha (No. 19) one witness states—That a brass vessel found in prisoner's house is his own.

For the defence of the prisoner Sheikh Nusera (No 20) two witnesses state—That the things found in prisoner's house are his own.

For the defence of the prisoner Sheikh Edoo (No. 21) two witnesses state—That they met him on a Wednesday evening in Bhadoon ; and two witnesses state that the things found in prisoner's house belong to him.

For the defence of the prisoner Sheikh Nujjoo (No. 22) one witness states—That on a Wednesday, in Bhadoon, prisoner had a sore foot, and was at home ; one witness states, that the things found in prisoner's house are his own.

For all the prisoners, excepting Dewa (No. 10) and Dookhee (No. 18) the witnesses to character speak favorably.

The jury whose names and occupations are entered below* find the prisoners Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18 and 22, guilty of dacoity with torture, and the prisoner No. 5, guilty of privity to dacoity, and having goods in possession, knowing them to have been obtained by dacoity. They find the prisoners Nos. 12, 13, 14, 19, 20 and 21 *"not guilty."*

In this verdict I concur. The confessions of the prisoners Nos. 3 and 4, before the principal assistant and the police officers, and the confessions of the prisoners, Nos. 6, 7 and 8, before the police of-

* Ukhowree Luchminarain, *mookhtar.*
Lalla Gujraj Singh, *mookhtar.*

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ficers, are sufficiently proved to have been voluntarily made. Against the prisoners Nos. 9, 10, 11, 15, 16, 17, 18 and 22, there is the positive recognition of one or more witnesses, and besides this, they have all been named by the confessing prisoners. That there are strong and generally well-founded objections to the evidence of recognition by witnesses, I am well aware; but these objections are often carried too far. The most usual are that the dacoits avoid showing their faces; that the witnesses are so distracted by fear, as to be incapable of recognising the dacoits, and that the evidence is most commonly given after the dacoits have been apprehended on other information. Granting the weight of these objections, I would answer, that frequently the dacoits are not cautious of exposure; that they remain for a long time (as in this case several hours) on the premises; that native dwellings afford many places of concealment; and that the inmates of the house, and the villagers, have perfect knowledge of the locality. It has been laid down by the Sudder Nizamut Court almost as a rule, that dacoits are sparing in the use of lights; that they keep them within the house, and extinguish them immediately on coming out. But to judge from my own experience only, in such trials as this, in this district, I would rather infer that dacoits use lights profusely, and that they rarely, if ever, extinguish them, until the decamping party has re-assembled, clear of the village, wherein, without the guidance or signal of a light, they might miss their way. As to the objection of late evidence to recognition, this objection seems to be applicable only when the witnesses profess to have known the parties by name, not merely to recognise them by the eye; and even in the former case, the objection loses much of its weight, when we consider the known timidity of the native character. Scarcely any one is willing to be the first witness, though when one has spoken, many will speak. But without insisting on these things, the other confirmatory circumstances in the present case claim attention. On the 10th September, that is, on the 2nd day after the robbery, the prisoners Sheikh Deenoo (No. 15) and Dookhee (No. 18) were certainly seen concealing goods, in the bed of a stream near Hazareebaugh. These goods were brought to the police station that same evening; they are such as are capable of identification, and are proved to belong to the prosecutor. This was before any collusion between the prosecutor and the witnesses Nos. 30, 32 and 52, was possible.

The defence before this court, of the prisoner Sookera (No. 3) is, in fact, a confession. He says that he was employed by Peeroo. Now, this Peeroo is the son of the prisoner Sheikh Noor Alee (No. 5) as appears by the prisoner's own statement.

On the finding of property in the several prisoner's houses, I do not lay any stress. The evidence of its identity for the side of the prosecution, is no better than that adduced for the defence.

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The evidence of *alibi* adduced by some of the prisoners, is too uncertain to be admitted.

By comparing the evidence of the same witness taken before the police officers, before the principal assistant, and before this court, many discrepancies will be apparent. I observe that the Sudder Court often refers to the evidence before the police, and holds any variation as fatal to the prosecution. That such discrepancies are only too common is to be deplored; and I unhesitatingly admit that the present state of evidence in our courts is almost a bar to justice. Every man prefers to tell the falsehood rather than the truth, and he can do so with little or no risk. But, on the other hand, the evidence taken before the police officers is open to question on other grounds, we cannot be sure that it is honestly recorded. Possibly this was one of the reasons that led the Government to desire imperatively, that evidence should not be taken by the police officers, and if the evidence taken by them in contravention of orders, be allowed to vitiate that solemnly taken before the higher courts, such precedents become at least inconvenient.

Against the prisoner Sheikh Noor Alee (No. 5) the finding of property in the enclosure of his house, and the proof of his attempt to leave some of the stolen property with others, are conclusive of his having it in possession with guilty knowledge. He is an old man, and there is a strong probability that the property was brought to him by his son Peeroo, who has absconded.

Against the prisoners Nos. 12, 13, 14, 19, 20 and 21, there is no sufficient proof.

Although the inspection by the police officers of the wounds and injuries inflicted on the prosecutor's wife, Musst. Nurit, show them to be very severe, I find strong reasons to believe that the full truth was not told, through fear of having her brought before the magistrate and the medical officer.*

Seeing that this dacoity is one of an aggravated character, I consider it proper to recommend that the prisoners, Nos. 3, 4, 6, 7, 8, 9, 10, 11, 15, 16, 17, 18 and 22, be sentenced to imprisonment for life, in transportation, with hard labor, in irons. Considering the age of the prisoner No. 5, I would recommend that he be sentenced to imprisonment for seven (7) years, with labor in irons, in the zillah jail.

The prisoners Nos. 12, 13, 14, 19, 20 and 21, have been acquitted and discharged.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—On taking up this case, it appears to be of a very complete nature; thirteen of the accused are recognized by witnesses who were present and saw them engaged in the act of dacoity, five

* I passed through the village (Koojoo) a few days after the trial was concluded, and the villagers told me this.

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confessed at the thanna, two of whom also confessed before the assistant to the commissioner; and upon the others property was found, which was claimed as the stolen property and sworn to by witnesses. Undoubtedly, if all this evidence was good of its kind, it would be sufficient to warrant a conviction; but on going carefully into the case, the particulars of evidence one after the other seem to become suspicious, and to fall away, until very little is left on which to found a conviction.

Of the fact of the dacoity, I entertain no doubt; but although no less than nine eye-witnesses say they saw the whole proceeding, not one of them stated that he recognized any individual at first; but after one suspected person was brought to the thanna and had confessed his own complicity and named a number of others; and after the police had apprehended the persons so named, then the nine eye-witnesses recognized some four, some five, some of them more of the parties so apprehended: they admitted they had never seen them before; but declared that from concealing themselves in different places, they had opportunities of observing the dacoits, and could now swear positively that these were the men. It is not impossible; but as the dacoity took place at night, the light of a torch or two, would hardly be sufficient to enable them to recognize even their acquaintance in the hurry and alarm of such an occurrence; it would be more difficult to observe strangers so as to recognize them afterwards; but that there should be nine such witnesses, is of itself very improbable, and I should be unwilling to give credit to their statements, even if they were consistent and not contradictory, as they are in some respects; moreover such evidence, even if given in good faith, is of doubtful value, for a witness may think he recognizes a man whom he saw during the robbery, and may say so; still the power of recognition of strangers under such circumstances is but small, and the witness may be mistaken.

Again as regards the discovery and recognition of the property, the Deputy Commissioner as well as the jury, throw out the most part of this, admitting that the evidence to the property on the part of the prisoners is as good as that on the part of the prosecution. In this I agree with them, and reject it. There remain the confessions at the thanna: as there are undoubtedly grounds for believing the police to have got up the evidence above rejected, both to the recognition of the persons and property, it is necessary to be most careful in admitting the evidence of confessions at the thanna, which have the same origin. I consider thanna confessions generally of doubtful value; though I admit that in some instances when they bear internal evidence of being genuine and voluntary, they are good evidence; but that is not the case with these; the manner in which they are recorded, and the course in which they describe events, are, to my mind, unsatisfactory. I therefore reject these thanna confessions.

Two of the prisoners however confess before the assistant to the commissioner, and I entertain no doubt that these confessions are genuine, and were fairly taken down, but they bear internal evidence also of being the result of instructions received beforehand; in fact one man, Sookera, says that the police moonshee told him to name several persons, and he named them accordingly. Of course these confessions are no evidence against other persons, but they may be admitted as proof of the criminality of the parties confessing to the extent therein mentioned, *viz.*, that they went with the dacoits, but remained outside while the others committed the robbery.

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I therefore convict Sookera (No. 3) and Sheikh Edun (No. 4) as accomplices in the dacoity, and sentence them to imprisonment, with hard labor, for seven (7) years. I acquit the rest of the prisoners and direct their release.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MUNDEER ALIAS MUNEEROODDEEN.

RUNGPORE.

1853.

January 15.

Case of MUNDEER *alias* MUNEEROODDEEN.

Charge—Uttering as true a forged subpœna. Held that seal and signature being wanting, the paper was in essential parts deficient in similitude to a true subpœna, and although the uttering it might be a fraud, it did not incur the penalties of forgery.

CRIME CHARGED.—1st count, forgery; 2nd count, having fraudulently issued or caused to be uttered a false and fabricated subpœna, said to be a foujdaree subpœna, knowing it to be fabricated; and 3rd count, having aided and abetted in the above.

CRIME ESTABLISHED.—Having aided and abetted in fraudulently issuing or causing to be uttered a false and fabricated subpœna, said to be a foujdaree subpœna, knowing it to be fabricated.

Committing Officer, Mr. C. E. Lance, officiating magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 6th October 1852.

Remarks by the sessions judge.—From the statement of the prosecutor on the part of Government and the evidence adduced, it was proved that the prisoner aided and abetted in fraudulently causing to be uttered and fabricated a subpœna, said to be a foujdaree one, without having the official seal or signature of the magistrate, through a fictitious foujdaree peada (for what object was not manifest), on certain persons (residing in the same village with the prosecutor and the prisoner) whom a prosecutor in an *ex parte* inquiry in a criminal case of assault desired as witnesses at the magistrate's court, whom the prisoner collusively wished to serve by thus securing their attendance, lest, perhaps, they (persons) should have evaded the process had it directly issued from the magistrate's court, whence the prosecutor would not have been able to prove his complaint.

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Case of MUNDEER *alias* MUNEEROODDEEN.

It appeared that certain zemindaree *omlah*, suspecting the genuineness of the subpœna, on seeing it, attempted to seize the prisoner, when he and the pretended foujdaree peada absconded, the former afterwards appearing at the thanna, when, on complaint lodged, he was apprehended and the above particulars came to light.

In his defence, the prisoner resorted to *alibi*, which was not proved, and ascribed the charge to animosity on the part of one Ramjoy, a zemindaree *omlah*, arising out of a previous quarrel he had with him, to which quarrel three witnesses deposed.

The *futwa* found the prisoner "*guilty*" of the third count in which I concurred.

Sentence passed by the lower court.—Three (3) years' imprisonment, without labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The facts of this case are not very clearly stated in the judge's abstract. They appear from the record to be as follows:—

One Onno preferred a complaint in the foujdaree court against Bona Kandoo. The prisoner, who is a *mookhtar*, it is presumed, was employed by the prosecutor or was in some way interested in the case. A person pretending to be a peon, went and informed certain persons that they were wanted at Rungpore as witnesses, in the case; the prisoner was with him and read a paper purporting to be a subpœna, but bearing neither seal nor signature. It was detected not to be genuine by the absence of these material signs of authenticity, nevertheless the persons cited therein went to Rungpore, and gave evidence in the foujdaree case, from which it may be inferred that they had really been cited in that case.

The point to be considered is, whether the subpœna was so fabricated as to bring the fabrication within the legal definition of forgery, for on that must depend whether the prisoner has rendered himself liable to the penalties of forgery by uttering the paper.

It is essential to the *criminal* forgery of an instrument that the act be done with intent to defraud or injure, and that the instrument is such as is calculated to obtain false credit, *i. e.* that credit which would be due to it were it genuine. It is not necessary that it should bear an *exact* resemblance to the original, provided it so far resemble it as to be likely to be mistaken for it by any common observer. It is however necessary that in *essential parts* it should bear upon the face of it the similitude of the true instrument.

The subpœna, of aiding in uttering which the prisoner has been convicted, was doubtless fabricated with intent to defraud or deceive, but the last-noticed essential to render the fabricator and consequently the utterer amenable to the severe penalties of forgery, is wanting. The commonest *ryot* knows that every process of court bears a seal and signature. A paper destitute of both these marks would not be likely to be mistaken for a genuine process by any one. The attempt at imposition was detected at once, and the persons cited as witnesses

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in the paper went to Rungpore notwithstanding the detection, not from faith in the paper, but, as they say, from fear of being carried off there by the police. The fabricated paper was wanting *in the most essential parts* of all similitude to a true subpœna.

For the above reasons I am of opinion that the prisoner has been improperly convicted, and the sentence is annulled.

It is not to be understood that the act of the prisoner is considered not to amount to a criminal offence ; it may have been a fraud, but the prisoner has already undergone sufficient punishment for it. He will be released.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SEEBOO MUNDER.

BHAUGULPORE.

1853.

January 18.

Case of SEEBOO MUNDER.

A conviction of murder merely on proof of deceased having been last seen in company with the prisoner, without proof of the murder of the missing person having been committed, cannot be sustained.

CRIME CHARGED.—1st count, wilful murder of Musst. Gurbee ; 2nd count, abduction of Musst. Gurbee, she being at the time lawful wife of Kentheree.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 14th December 1852.

Remarks by the sessions judge.—The prisoner pleads "*not guilty.*"

The case against the prisoner is, that towards the end of June last, he took Musst. Gurbee from her husband's house, and was seen in her company, and conversed with, by several persons on the road leading to her paternal home ; that since that time Gurbee has been missing, notwithstanding every inquiry on the part of her husband, brother and other relations.

Musst. Gurbee is stated to have been a comely girl of about twelve years of age, she had on silver and other ornaments of the value of about ten rupees. Her husband's house is in the village of Rikabgunge, near Rajmehal, her paternal home in Sahibnuggur near the village and indigo factory of Dogatchee, about ten *coss* East of Rajmehal.

The principal witnesses for the prosecution are, Lushkuree (No. 1) who states that he lives at Guboon, about four *coss* from Rikabgunge ; that in the month of Assar, about the time the mangoes were ripe, the prisoner Seeboo with Musst. Gurbee came to his house about 3 or 4 in the afternoon ; that he sat down and smoked and got some food for Gurbee, but left again after a very short time ; that Seeboo said he was taking Gurbee to her father's house at Dogat-

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chee, and Gurbee said Seeboo was her *maussa*, (aunt's husband), and was taking her to her home ; that Gurbee had on some silver ornaments which he describes ; he was previously acquainted with Seeboo and Gurbee ; Kentheree came to his house some days afterwards to make inquiries about his wife when he told him all he knew.

Nuttoo Munder (No. 2) boatman at Begumgunge Ghat, states—that in the month of Assar, one evening after dark, Seeboo prisoner, with whom he was well acquainted, crossed the river in his boat, in company with a young girl, and went on towards Dogatchee, which is about a quarter *coss* from where prisoner landed. Seeboo told witness that the girl was his daughter, and that he was taking letters from Rajmehal to Dogatchee, which was his wont, he being a servant in the employment of the factory ; the witness describes the ornaments worn by the girl corresponding with the evidence of No. 1.

Munsaram (No. 3) states—that he also saw Seeboo crossing the Begumgunge Ghat, and a young girl with him, that as it was late in the evening, he asked him to stop the night at his house, but he refused. Seeboo told him that the girl was his daughter.

Sonaram (No. 4) the same as No. 3.

Narain Chye (No. 5) the same, but swears that the girl with Seeboo was Gurbee, whom he had known for some years.

The next important witness is Kentheree (No. 9) the husband of Gurbee, a labourer, a young man of about twenty, who states that in the month of Assar, after the *oolta ruth*, (the 26th of June,) on returning home late at night he found neither his wife Gurbee nor his mother in the house ; he and his mother were both in the habit of being out on their several employments in the fields but his wife remained at home. On inquiry among the neighbours he found that his mother had returned home but gone out again to look for Gurbee. The next morning he went straight to Dogatchee, to inquire for Gurbee at her paternal home, and not finding her there agreed with her brother Mungroo to make separate inquires among their several relations. On his way back he met his mother, also inquiring along the road, and they returned home together, searching everywhere for Gurbee. The next day, prosecuting these inquiries among the neighbours, he fell in with one Musst. Rookeea Chynee, who told him that Lushkuree (witness No. 1) knew something about Gurbee ; he then went to Lushkuree's, and having heard what he had to say about Gurbee being on her way home, returned home satisfied in his mind that his wife had after all returned to her father's house at Dogatchee : eight days afterwards however, Mungroo, Gurbee's brother, came and told him that she had not been heard of ; the two, Kentheree and Mungroo, then went together to Lushkuree's house and made him recapitulate his story, when Mungroo returned to his home and witness came back to his, still satisfied in his mind that his wife would be found at her paternal home.

Nothing more was done till the month of Bhadoon, the country being under water and there being no means of getting about from place to place. In Bhadoon however (the latter part of September) Jubboo Chye, the grandfather of Gurbee (her father was dead), came to Kentheree and asked to see his grand-daughter; on his telling him that she was not there and in the course of conversation on the subject Seeboo Munder Sanee, a namesake and brother-in-law of the prisoner, came and told them that in a casual interview with the prisoner, he had confessed to having about two months and a half before made away with a man's daughter. This corresponding with the date of Gurbee's disappearance and the facts connected therewith, led to Kentheree's immediately giving notice at the zemindaree cutcherry and the Rajmehal thanna and eventually to the apprehension of the prisoner.

Mungroo (No. 10) and Seeboo Munder Sanee (No. 11) confirm the statement of No. 9.

Seeboo Munder, prisoner, tells a confused story; the drift of which is to throw the guilt on Jubboo Zurgur (witness No. 15) but the story is utterly weak and unworthy of credit, and unsupported by any evidence. The witnesses cited by prisoner denying all knowledge of the facts he attempts to prove.

The law officer brings in a verdict of "*guilty*" on strong presumptive proof.

It is clear from the concurrent testimony of witnesses Nos. 1, 2, 3, 4 and 6, that about the time specified, prisoner took Gurbee from her husband's house, and on pretence of taking her to her paternal home, conducted her as far as the ferry of Begumgunge, and that since landing from Nuttoo Munder's boat on the East bank of that ferry, nothing has been heard of her.

The husband's story of his loss and search is also well-authenticated. It is difficult to account for his conviction all along that his wife had sooner or later returned to her father's house, but such seems to have been his feeling. The story too of Seeboo Munder Sanee (witness No. 11) seems highly improbable, yet it is impossible to disconnect the prisoner with the guilt imputed to him. No sort of sinister object in bringing the accusation against him seems to attach to any of the parties concerned, and after gravely weighing the facts as adduced in evidence and a full perusal of all similar cases on record, I have come to the conclusion that the accused must be made answerable for the person of Musst. Gurbee. I convict him therefore of murder, but under the circumstances above detailed, and in accordance with the court's ruling of the 5th November 1839, in the case of Annund Mundul *versus* Thakoor Doss Chuckerbuttee and others, would recommend that he be condemned to imprisonment for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—Setting aside the evidence of Seeboo Munder Sanee (witness No. 11) which the sessions judge discredits, there is no proof

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of the charge whatever against the prisoner, except that the girl Gurbee was last seen in his company, and that he falsely represented her as his daughter.

There is no proof that she was murdered, except the inference which may be drawn from her not having appeared since June, which circumstance, although affording strong ground for suspicion, is not conclusive on the subject. No motive for her murder by the prisoner is assignable. It is suspected that he did so for her ornaments, which however appear to have been of small value (not above ten rupees,) and there is no evidence to his being a man of bad character.

In the case quoted by the sessions judge, there was in addition to proof of being last seen in company with the prisoner, evidence to the discovery of marks of blood and of other traces of a murder having been committed, and the prisoner admitted that another prisoner charged with the crime at the same time had seized and carried off the missing person.

The case in which a conviction was had, most similar in point of evidence to this, is that of Sooroop Malakar, vol. I, page 226.; but in that there was moreover proof of the prisoner being seen carrying a child *covered up with a cloth and its feet hanging down as if the child was asleep or sick* after the missing child had that very evening been seen in his company. In that of Kednia, vol. I. page 305, the ornaments of the missing child were proved to have been pawned by the prisoner, and he stated at one time that he had sold the child, at another that he had lost him. In the case of Chartoo Telee, vol. II., page 84, the prisoner confessed to the villagers that he had poisoned the deceased.

In these three last cases a distinct conviction of murder does not appear to have been pronounced, and a sentence of imprisonment was passed terminable by the appearance of the missing person, or proof of his having been made away with by means not implicating the prisoner.

The proof in the present case is insufficient to sustain a conviction of murder, and without such conviction, a conditional sentence such as those above alluded to is not, in my opinion, proper.

The prisoner will be released.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

KALEE KINKUR GHOSE.

MYMENSING.

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Case of KALEE KINKUR GHOSE.

The Nizamut Adawlut considering the fact of the forgery not to be proved, acquitted the prisoner who had been convicted by the sessions judge, of uttering the alleged forged deed.

CRIME CHARGED.—1st count, forgery by writing in the *mookhtarnama*, dated 14th Poos 1259 B. S., the word "Bong Sree Kalee Kinkur Ghose" under the signature of Benode Ghose, Ramkeyshub Ghose and Ramhurree Ghose; 2nd count, knowingly uttering the aforesaid paper in the moonsiff's court at Chowkey Madargunge.

CRIME ESTABLISHED.—Knowingly uttering a forged document.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. Trotter, officiating sessions judge of Mymensing, on the 6th December 1852.

Remarks by the officiating sessions judge.—A case was instituted in the court of the moonsiff of Madargunge against the prisoner for the amount of a bond, in which the prisoner's mark is made in the place where his signature is written by another person, a mode adopted for signing documents by those who do not know how to read and write. The prisoner denied the debt, saying that he knew how to read and write, and had the bond been a genuine document, he would have signed it himself and not merely made his mark, and in support of his assertion he filed in that court a *mookhtarnama* of 14th Poos 1249 B. S., said to have been given in his favor by Benode Ghose and others, in which, under the signature of the parties, are the words "*bakullum* (by the pen of) Kalee Kinkur Ghose," showing that those parties did not know how to write and their names were written by the prisoner. The moonsiff admitted the plea and upon this and other grounds dismissed the plaint. On appeal the judge upheld the moonsiff's decision* but on the grounds that the prosecutor did not establish his case, but the forgery having been at the same time discovered he made over the respondent to the magistrate. The *mookhtarnama* was attested by the cazee of the pergunnah, who retains a copy of every document attested by him in a book paged and signed previously by the judge, which book after completion is filed in the record office of the judge. This book was sent for, and the copy compared with the original *mookhtarnama*, but the words "*bakullum* Kalee Kinkur Ghose," were not in the copy in the book, and the cazee, whose evidence was taken, declares that these words were not in the original *mookhtarnama* when brought to him for attestation, for if such had been the case it would have been so

* *Vide* Zillah Decisions of Mymensing.

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stated in his certificate of attestation. The evidence of the pleader and mohafiz of the moonsiff's court shows that the prisoner himself filed the document in the court containing those words. The prisoner does not deny filing the document in the court, but urges that the words were so written before it was attested by the cazee, and cited witnesses to prove that it was so written and signed at the time it was originally prepared, and that he did not afterwards forge it. His witnesses, the parties who gave the *mookhtarnama*, partially supported his statement, but their evidence cannot be depended upon as they are his relatives. It has been clearly established that the *mookhtarnama* did not contain those words when it was attested by the cazee, and that the words were afterwards added and the document filed by the prisoner in the court with a view to prevent the ends of justice. I therefore concurred in the verdict of the jury and convicted him of knowingly uttering a forged document. It is to be remarked that the words are written in a very clumsy *(kutcha)* manner, evidently showing that the prisoner did not know how to write.

Sentence passed by the lower court.—Three (3) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The conviction is erroneous; the crime of which the prisoner Kalee Kinkur is convicted is uttering a forged document. The document is a *mookhtarnama*; the names of four persons who executed it, are entered on the document with the addition of the words "*by the pen of Kalee Kinkur Ghose*"; this document was registered by the cazee, and in his registry these words are not found, and he says they could not have been there when he registered it, but three of the parties who executed the document, appeared in court and swore that the prisoner did sign for them and added the words in question before the registry; there is therefore direct evidence to this fact; whereas the evidence of the cazee is not so direct, but merely presumptive; at all events the evidence is contradictory and the prisoner must have the benefit of this contradiction. The prisoner filed this *mookhtarnama* in a suit against him to show that he could write, and that a document pleaded against him, bearing his mark instead of his signature, was therefore false; now if the point at issue was whether the prisoner could write or not, the court should have required him to write in its presence, which would have settled that point beyond doubt or question, but I do not think that the forgery of the document in question is established; it is not just to reject the evidence in his favor, which is the best evidence procurable, on the point, simply because the witnesses are the prisoner's relations; there must be something more tangible and direct than the fact that the words in question are wanting in the copy in the cazee's book to invalidate the testimony of those who saw the entry made on the document at the time it was written, and who authorized the prisoner to make such entry. I acquit the prisoner.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOPAL SOOREE

versus

RUSSICK NAIK GHUTWAL (No. 5), RAM GOPAL NAIK GHUTWAL (No. 6), BHUGGERUTH NAIK (No. 7), MUGGUN NAIK (No. 8), GOORAYE NAIK (No. 9), GOUR ROY GHUTWAL (No. 10), GOPAL ROY (No. 11), NUFFER NAIK GHUTWAL (No. 12), MADHUB ROY (No 13) AND MODHOO NAIK (No. 14).

WEST BURDWAN.

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Case of RUSSICK NAIK GHUTWAL and others.

The proof against the prisoners being satisfactory, their appeal was rejected.

CRIME CHARGED.—1st count, Nos. 5 to 14, dacoity in the house of the prosecutor, on the night of 24th March 1852, corresponding with 12th Cheyt 1258 B. S., attended with the torture of prosecutor by application of a red-hot stick, and plundering property valued at rupees 142-11-6; and 2nd count, Nos. 11 to 14, knowingly receiving and having in their possession property acquired in the said dacoity.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor, attended with the torture of prosecutor by application of a red-hot stick, and plundering property valued at rupees 142-11-6.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 9th November 1852.

Remarks by the sessions judge.—This dacoity appeared, as usual, to have been planned by *ghutwals*, and carried out by the assistance of labourers, and such other low-caste men as could be persuaded to join them.

The inhabitants of the prosecutor's village of Taldangrah, had fled from the cholera, and he had consequently persuaded four *ghutwals*, named Rughoonath Naik, Bunsing Naik, Rajoo Naik and Koshal Naik, to form a peculiar guard over his house. The two first of these were inside, and evaded as soon as the dacoits made their appearance; but the others, who were *ostensibly* bound by them with cloths, looked on until the robbery had been completed. During that operation the prosecutor was also bound and burned in two places, with a red-hot stick, but by which of the dacoits did not appear. The scars left by the burns were not extensive, but they must have been painful when first inflicted.

The robbers must have known where the cash was, for it was apparently found and dug up immediately. Grass *mussals* were made on the spot and used during the dacoity.

Before morning the above-named two *ghutwals*, Rughoonath Naik and Bunsing Naik, returned with others from the Chenchoo-

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riah phandee; and the latter, on finding traces of the robbers, in the shape of grain, &c., spilt on the road, followed them up to the bank of a *khal* at Amjoree, near which was the house of the prisoner Gopal Roy Khyrah (No. 11). On searching the jungle at that place five sacks of grain, tobacco, cloth, cotton, wool, &c., were found hidden about, and more of the same kind of property in the house of the above prisoner, who subsequently confessed to the darogah, and named a large number of persons as his accomplices, inclusive of the prisoners committed.

These, when apprehended, also confessed, and Nos. 11, 12, 13 and 14, pointed out and delivered up certain portions of the stolen property. The houses of the other persons, named in the confessions, were searched, but no property or other proof against them was discovered.

All the prisoners repeated their confessions before the magistrate, except No. 13, and the names of all were interchangeably mentioned. One Baooree Dass, formerly *ghutwal* of Taldangrah, was the declared planner of the dacoity, and the complicity of the *ghutwals* Rughoonath, Bunsing, Rajoo and Khosal Naiks, was also affirmed.

The prisoner Russick (No. 5) acknowledged that he had actually followed up the trail, with the other *ghutwals*, a choice specimen of the impudent villany of these so-called police functionaries.

The apprehension of the prisoners, the *sooruthal*, the finding and recognition of the property, and the authenticity of the confessions, were all sufficiently proven.

The prisoners pleaded "*not guilty*," but could make no valid defence. Maltreatment by the darogah and mohurir and others was alleged, but no evidence adduced in support of the allegation. The prisoners named a very large number of witnesses to character, &c., in the joint magistrate's court, but only Nos. 10, 11 and 14 wished three of theirs to be examined by me, whose evidence was *nil*.

It appeared to me that all the prisoners were quite indifferent to imprisonment, after what they had seen of the comforts of the jail. Such indifference on the part of criminals, is very often witnessed here, and demonstrates the necessity of rendering the punishment much more terrible, than it is at present.

As I saw no reason whatever to doubt the guilt of the prisoners, I convicted them of the crime charged, as per the first count, and sentenced them as noted.

In explanation of the heavy sentence awarded to the *ghutwals* Nos. 5, 6, 10 and 12, *see* my letter to the court No. 210* of the

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Extract from a letter from the Sessions Judge of West Burdwan to the Register of the Nizamut Adawlut, No. 210, *dated the* 1*st November* 1852.

"I consider it my duty to remind the court, that the rural police of this district is peculiar; that it in fact consists of organized bands of doubtful characters, united by an evil *esprit de corps*, whose powers of intimidating the inhabitants, obtaining information of property, eluding pursuit

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1st November 1852. I inflicted a lighter one upon the other prisoners, in consequence of this dacoity being apparently their first crime, and of their having, most probably been urged to commit it by the *ghutwals*.

Sentence passed by the lower court.—Nos. 5, 6, 10 and 12, each, twelve (12) years' imprisonment, with labor in irons, in banishment, and two (2) years' in lieu of stripes also with labor in irons, and two (2) years' more in consequence of their being police officers, total, sixteen (16) years' imprisonment, with labor, in irons, in banishment, and Nos. 7, 8, 9, 11, 13 and 14, each, ten (10) years' imprisonment, with labor in irons, in banishment, and two (2) years' more in lieu of stripes, total (12) twelve years' imprisonment, with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present; Mr. W. B. Jackson.)—Against the prisoners Nos. 5, 6, 7, 8, 9, 10, 11, 12 and 14, are their confessions before the magistrate, besides other evidence, there is therefore no reason to interfere with their conviction and sentence: against prisoner No. 13, Madhub Roy, there is a Mofussil confession, and the witnesses to finding property in his house, have attested this fact. I find no sufficient reason to doubt this evidence, and affirm the sentence on him.

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and tampering with the intermediate functionaries and ministerial officials of the joint magistrate and his deputies, are such, that their temptation to commit rapacious crimes is always very great; and that, as long as their present organization remains in tact, the same can only be lessened by the infliction of the most severe punishment, authorized by the laws, upon such as yield to it."

PRESENT:

J. DUNBAR, Esq., *Judge.*

R. H. MYTTON, Esq., *Officiating Judge.*

MOOSAHIB KHAN, MUSST. TEKMONEE AND GOVERNMENT

versus

BHINUK KULAL (No. 6) AND HOSSEINEE KULAL (No. 7).

BEHAR.

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Murder for sake of ornaments. Sentence of death on one prisoner, ditto of transportation for life on the other, the son of the first, in consideration of the presumed influence of his father.

CRIME CHARGED.—1st count, wilful murder of Chumput Lal, boy, with intent to rob him of his ornaments; and 2nd count, robbing the ornaments valued rupees 45-12-3, from the body of the deceased.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 7th December 1852.

Remarks by the sessions judge.—The deceased, a youth of about fourteen years of age, only son of a *muhajan*, who died three years ago, having also lost his mother, resided at Booneyadgunge Peyannee, large villages on the banks of the Fulgo, opposite the town of Gyah, with his mother-in-law, the prosecutrix, Musst. Tekmonee. The other prosecutor, Moosahib Khan, was his personal attendant, who, returning to the house after having executed some petty messages on the morning of Tuesday, 21st of September last, and inquiring after his young master, was told by the inmates to look for him in the bazar. The deceased as usual, and more particularly in his petted position, as the only son and head of the family, wore jewels. Some time elapsed before Moosahib Khan succeeded in tracing the deceased to the prisoner Bhinuk's house, distant some five *russees* from his own. Dhow Joolaha, acquitted by the magistrate, a debtor of the deceased's rented a room and its appertaining northern veranda from Bhinuk, through which was the main entrance to Bhinuk's dwelling. Dhow was the first to inform Moosahib Khan, that the deceased had been there urging payment, which he met by promises, and that the deceased after playing at *cowrees* with the boy Idoo (witness No. 3), another son of Bhinuk, in which he won, had gone away. This Bhinuk also confirmed on being questioned. Dhow then appears to have accompanied Moosahib to consult some oracle from whence they returned profitless. Information was obtained from the boy Booluk* (witness No. 18), that whilst passing by he had seen Hosseinee (prisoner No. 7) take the deceased inside his dwelling by its side-door. This led to inquiry after Hosseinee, who was said to be absent from home with some relatives at Budeyja, two miles distant. By this time it had been late, and Moosahib Khan insisting that the deceased must

* Though according to Moosahib Khan's deposition before the police, he obtained such information from Dhow, as well as this boy.

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have accompanied Hosseinee, Nazir Alee (witness No. 19), another son of Bhinuk's, employed at a liquor shop many miles distant, but who happened to return home that evening together with one Fuqueera, appointed by Moosahib Khan, were despatched to inquire after Hosseinee and the deceased. At midnight they returned together with Hosseinee, reporting that the deceased had not accompanied him. Information was duly lodged at the thanna the next morning, Wednesday the 22nd, and Punchum Burkundauz, was appointed to search for the missing lad. Punchum Burkundauz spent the forenoon of Wednesday in fruitless inquiries, until an alarm being set up, that a dog had been seen pulling about a human limb out of a deep ditch full of water, the burkundauz, accompanied by fishermen, proceeded there, and dragging it, the other arm (that first brought to view by the dog being one), and the right foot were found. This ditch was about one *russee* distant from Bhinuk's house within the precincts of the village. By this time it had grown late, but the limbs being recognized as the deceased's, for the right hand* was singular from having six fingers, left no doubt of a foul murder having been committed, and as he had been thus last traced to the prisoners' house, the suspicions against them became stronger, and they were then apprehended, having up to this period apparently continued passive spectators of the search. It was night before Punchum Burkundauz's report of what had been discovered, reached the thanna, *vide* his Return, No. 16, of 22nd September, when the darogah arriving on the spot during the night, put a watch on the prisoners' house, and following up the investigation the next morning, Thursday the 22nd idem. Bhinuk's daughter-in-law Musst. Tajo (witness No. 1) and Nazir Alee's (witness No. 19) wife, acknowledged that the deceased had been murdered inside their dwelling, and his jewels had been given her to keep by her father-in-law Bhinuk, which communicating to her husband Nazir on his arrival that evening, and on his becoming very angry with her about it, she threw them, tied up as she had received them from Bhinuk, into the well inside the court-yard of their common dwelling. Sita Mullah (witness No. 13) dived into this well and brought up a small bundle, in which was found all the jewels, Nos. 1 to 7 inclusive, usually worn by the murdered lad, tied up in his cap. Every place being ransacked in further search of the remaining limbs, the head, tied up in the deceased's sheet, was found the same morning in a broken-down well, but which contained water, situated outside the village, and upwards of five *russees* distant from

* Both arms, though duly forwarded by the darogah, *vide* his Report, No. 3, of 23rd September, do not appear to have been seen by the civil surgeon, who did not observe anything peculiar in the one he saw. The magistrate's attention has been drawn in my letter No. 275, dated 29th November 1852, to this oversight, which, except from what followed, might have been serious.

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the prisoners' dwelling. The head, jewels and clothes were now undeniably recognized as the unfortunate deceased's. Here including the blood spots observable inside the house, the *corpus delecti* rests, for no information regarding the remaining portions of the body has been forthcoming. The foregoing particulars including the prisoner Bhinuk's confessions have been amply corroborated by the evidences of the prosecutors and witnesses Nos. 1 to 19 inclusive, omitting the boy Booluk (witness No. 18) not sworn consequent on his youth.

The inmates of Bhinuk's (prisoner No. 6) dwelling consisted of his daughter-in-law, Tajo (witness No. 1), Modoo (witness No. 2), Hosseinee's (prisoner No. 7) wife, and his son, the boy Idoo (witness No. 3), besides Dhow Joolaha, already noticed as renting a room and veranda at the main entrance. Dhow having been acquitted by the magistrate, I need only remark that his complicity in the crime rests solely on Bhinuk's implicating, and Modoo's very equivocal mention of him, and the fact of his own or his wife's presence within the walls of the dwelling, when this atrocious murder took place. But as borne out by so many circumstances, the fact is also as undeniable, that both the murder and its concealment must have been most cautiously, suddenly, and secretly perpetrated, when it did not even give rise to the slightest suspicion amongst the neighbours, of various castes, whose houses surrounded the prisoner's; and thus, although the room rented by Dhow had a door opening inwards on the common court-yard and well within it, yet it was not always necessarily kept open, and if this was the case, and there is no evidence to the contrary, Dhow and his wife might have been just as ignorant of the occurrence as the surrounding neighbours.* Dhow also, may or may not have been made use of to mislead the prosecutor, Moosahib Khan, in his almost immediate inquiries after his master, whose corpse must at that time have been lying warm inside the house; but here again the slightest proof of his guilt in any degree appears wanting. Musst. Modoo's original statement before the police tended to criminate Dhow, jointly with Bhinuk and Hosseinee, for after repeatedly naming them together she concluded by saying "that both Hosseinee and Dhow went inside the house, and she could not say whether both aided in the murder or whether Bhinuk alone committed it;" but in her subsequent depositions she altogether denied Dhow's complicity, beyond maintaining a certain degree of consistency before the magistrate, when she said, that "Dhow like themslves at the main entrance must have been equally aware of what was taking place inside." The treatment of the pro-

* The prisoner Bhinuk, wildly questions this point in his defence before this court, and in his interrogation of some of the witnesses how the murder, as alleged, could have taken place, without their being aware of it; every thing in each other's houses, owing to their proximity and the nature of their dwellings, being overheard by one another.

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secution originally in a different manner, as will be further noticed, might perhaps have produced better information, which it is now vain to look for. Like most native dwellings, besides the main entrance to the northward, the prisoner's house had another by a side door opening on the lane to the southward. It was whilst sitting in the main entrance that Tajo and Modoo depose to having seen Hosseinee admit the deceased by this southern door; and considering the small space occupied by native dwellings, there is nothing improbable in this. This southern side-door admitted to the common court-yard of the house, and it was in its western veranda, in the doorway of its south-west room that the unfortunate youth was strangled, his body being dragged thence inside this room, where numerous stains of blood were found, which had been rudely attempted to efface by plastering, as deposed to by the attending witnesses. It was here, according to Bhinuk's confessions, that the body was cut to pieces, from which even with an interval after death by strangulation, Dr. Diaper is of opinion "the stains of blood must have been considerable."

Tajo (witness No. 1), Modoo (witness No. 2), and the boy Idoo (witness No. 3), have always deposed to Hosseinee's bringing the deceased inside the house by this side-door, and that on hearing sounds, they observed Bhinuk had him on the ground, pressing his throat with the step of a ladder, whilst, according to Tajo, Hosseinee held him by the feet. Bhinuk is a strong powerful man, which his son Hosseinee is not. Modoo qualified her evidence before the magistrate, saying her husband Hosseinee was only standing by; and before this court, that she saw nothing, as Bhinuk shut the door in their faces, whilst Idoo's is much to the same effect with Tajo's, with this difference, that whilst Bhinuk strangled the deceased with the step, Hosseinee sat across his breast. Idoo is a sharp, intelligent lad, upwards of twelve to thirteen years of age, was duly sworn before this court as a competent witness, and gave his evidence as he had already done, both before the police and magistrate, in a clear and satisfactory manner; but when again re-called for examination, he revoked all he had previously deposed to, declaring it to have been falsely made on Musst. Modoo's suggestions, improbable in itself, as well as most probable that such wilful perjury originated with the progress of the trial in other motives. In a trial of so heinous a nature considering it impossible to overlook such perjury, I have directed his committal for the offence. Musst. Tajo also deposed to her having received the deceased's jewels from Bhinuk, and to her having thrown them into the well in the court-yard, where they were recovered, as already narrated.

Before the darogah, after a lengthened interrogation, embracing all the discoveries which had taken place up to the morning of the 23rd, Bhinuk confessed that Dhow Joolaha had put him up to murder the lad for the sake of his ornaments. Dhow promising to inveigle the

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youth into the house for such purpose, which, having done, they jointly strangled him. Moosahib Khan's inquiries followed, and having cut the body to pieces towards evening, he, Bhinuk, threw away both hands and feet, and Dhow the head and trunk, he knew not where. His confession before the magistrate is much to the same effect, and is duly signed by him in good *Hindee* writing. In both confessions he is almost altogether silent regarding Hosseinee, except as to his being sent for from Budeyja. Before this court he revoked his confessions, which he had alleged had been extorted from him, at the same time acknowledged all the circumstances elicited by the prosecution, exclusive of the murder itself, which he denied, and did not attempt to account for in any manner. He pleaded that it was strange there should be stains of blood in the room inside, instead of the veranda where the murder was said to have been committed, forgetful of his own confessions, which explained that the deceased was only strangled in the veranda, and afterwards cut to pieces in the inner room as would seem most probable when wearied out by Moosahib Khan's persevering inquiries, and the approach of night facilitating the removal of all traces of the crime, which for the time at least, was skilfully and successfully done. When questioned as usual on commitment, he called witnesses Nos. 20 to 23, who he then said would prove that he did not murder the deceased. Before this court he resigned the two last to Hosseinee, and named the two former in support of a frivolous pretence, regarding the weighing of grain, meant to support a kind of *alibi* attempted in Hosseinee's favor, but which both these witnesses, as also the numerous other witnesses summoned by Hosseinee, altogether denied, as well as the knowledge of anything favourable to either of the prisoners.

Hosseinee's defence before the darogah was, that his father had committed the murder whilst he himself was absent at Budeyja. Before the magistrate he maintained his absence at Budeyja, until recalled thence at midnight, and only mentioned his father as confessing the murder on the discovery of the limbs. He also said he left the deceased gambling when he started for Budeyja. Before this court he repeats none of these particulars, but entered into a lengthened defence, giving studied details explanatory of his absence for the whole of Tuesday, part of the time accompanied by the witness Musst. Tajo, not a word of which, excepting his visit to Budeyja, was ever mentioned before, or is known to a single witness. He set up in like manner a new pretence, improbable in itself, according to his own narration of it, of his having detected Moosahib Khan using improper familiarities towards both the witnesses Musst. Tajo and Modoo.

The *futwa* of the law officer, taking objection to the evidence of the eye-witnesses as women and contradictory, declares *kissas* barred, but convicts Bhinuk on his own confessions of culpable

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homicide, and declares him liable to punishment for the price of blood by *deeyut*. In like manner he convicts Hosseinee as an accomplice in the same crime, and subjects him to the same punishment.

Such a finding is altogether arbitrary. The crime is wilful murder of the very worst kind, or it is nothing. It is such by Bhinuk's own confessions, which are amply corroborated by all the circumstances which so truthfully preceded them, and providentially led to its detection. It was designedly cold-blooded beyond the possibility of extenuation. The unfortunate victim was first cajoled by winning from the boy Idoo, then coaxed inside the house by the side-door for the purpose, it is said, of playing at cards, although he does not appear to have been in the habit of gambling, or of frequently going about unattended, as is manifest by Bhinuk's own confessions. The murder was as cruelly executed as, from its secret success, it must have been adroitly planned, and all but as successful in its diabolical concealment, except for the singular instrumentality of a dog. This places the evidence of the eye-witnesses, inmates of the house, in a doubtful position, for all of them including Nazir Alee, (witness No. 19), if not accessaries before, were at least such after the fact, on their own showings. What other evidence could have been forthcoming of a dark deed thus infamously perpetrated, inside the prisoner's dwelling, in broad day-light, in the heart of a populous village, and successfully concealed for days, than that of the inmates of such a wretched dwelling? Doubts did occur to me, whether the evidences of these persons ought not to have been originally accepted by making them approvers. The irregularity, if it was one, seemed to me not only beyond my interference, but even, if I had possessed such power, under the peculiar circumstances of the case, and in that stage of the trial, it would have been undesirable to have exercised it. Such arrangements, according to law, are almost solely vested in the magistrate, the sessions judge's interference, agreeably to Section V., Clauses 1 and 2, Regulation X. of 1824, being restricted to the committal of any person, " who has not conformed to the conditions under which the pardon was tendered," or " directing the tender of a pardon to any accomplice or accessary for the purpose of obtaining his evidence as a witness," in neither of which positions did these witnesses appear before this court. But regarding their testimony apart from such considerations, and bearing in mind the trying positions in which they stood as sons, and daughters-in-law, deposing to a father or father-in-law, husband or brother-in-law's, perpetration of such an odious crime, the utter want of moral principle to direct them under such a painful ordeal, and the slavish thraldom for good or evil which so peculiarly binds the members of native families together, to the best of my judgment, I find, that as soon as they dared open their mouths, with such slight reservations as might be expected from persons in

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their positions, they told the truth as naturally and consistently as it has been corroborated by circumstances beyond their control, and which equally confirm the genuineness of Bhinuk's confessions in as far as regards his own criminality, and rebut the frivolous, inconsistent, and totally unsupported pretences set up by both prisoners before this court. Resting on these results, I convict Bhinuk Kulal (prisoner No. 6) of the wilful murder of Chumput Lal boy, for the sake of the ornaments on his person, and it is in vain that I look for a single circumstance attending this hideous crime, which could possibly hold me excused for urging anything in arrest of the extreme penalty of the law.

The proofs against Hosseinee (prisoner No. 7) are necessarily weaker, but I find no want of proof of his guilt both direct and presumptive.

I rely for the reasons already explained on the evidences of the two women Tajo and Modoo, under the peculiar circumstances of the case, the evidence being thus insufficient for conviction without the testimony of the latter, his wife, which I accept in all its reservations as most natural. It is impossible that Bhinuk alone and unaided, could have effected so singular a murder, and suppressed its discovery so long. Besides Dhow Joolaha no other man but Hosseinee could have been inside the house with Bhinuk at the time of the occurrence, for by all accounts his brother, Nazir Alee, (witness No. 19,) did not arrive till the evening accidentally from a great distance. Hosseinee by right had easy access to the interior of the house, which Dhow Joolaha could not have had without his cognizance and permission. Hosseinee's subsequent departure for Budeyja, and his being brought thence at midnight, proves nothing in his favor, in his total absence to give any satisfactory explanation of his movements during the whole of that day, which, also according to his statements before the magistrate and this court, are contradictory, or for the emergency of his visit to that place, besides that the whole or any portion of such statements are utterly unsupported by the testimony of a single witness out of the many called by him, as would scarcely have been the case had they contained a word of truth. It looks more like an absence designedly made to gain time and opportunity over, and mislead Moosahib Khan's troublesome inquiries, and damp suspicion against themselves. I convict Hosseinee as an accomplice in the wilful murder of Chumput Lal, but with regard to the incompleteness of the evidence against him, would sentence him to imprisonment for life, in transportation beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. Dunbar and R. H. Mytton.)—MR. R. H. MYTTON.—I concur in the finding of the sessions judge, and the sentence he proposes against both the prisoners in this case. It is certainly surprising that while the witnesses state that Bhinuk and his son were the sole

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murderers, Bhinuk in full and circumstantial confessions, bearing all the appearance of truth, names Dhow as his accomplice instead of Hosseinee. The latter is his son, and he may have wished to save him, and therefore substituted the name of Dhow for that of Hosseinee, all the incidents remaining the same. However, this circumstance raises a doubt, and Hosseinee is young, and some allowance is due for the influence of his father. For these reasons I abstain from recording an opinion for sentence of death against him, as I do against Bhinuk, in whose favor no palliating circumstances are discoverable.

MR. J. DUNBAR.—I concur in the propriety of the sentences recommended by the sessions judge against Bhinuk and Hosseinee respectively. The evidence leaves no doubt of the guilt of the former, and makes out a case of the very strongest presumption against the latter.

Well, indeed, may the sessions judge take exception as he does to the *futwa* of the zillah law officer. The reasons upon which he grounds his verdict of culpable homicide, in such an atrocious case, appear to me most inconclusive. Strangling a lad for the sake of his ornaments and afterwards cutting him up like a dead sheep with a view to remove all evidence of guilt, is plain murder, and no sophistry can alter the hideous complexion of the crime.

The magistrate should be directed to point out to the darogah that his mode of examining prisoners is objectionable. He should simply state the charge and ask the prisoner what he has to say to it, instead of asking him why he committed the crime.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND BENEE SONAR

versus

MODHOO GOWALLA.

24-PERGHS.

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Case of MODHOO GOWALLA.

Wounding with a knife. Sentence, two years' imprisonment.

CRIME CHARGED.—Wounding with intent to murder the prosecutor Benee Sonar.

CRIME ESTABLISHED.—Wounding.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 1st November 1852.

Remarks by the sessions judge.—The prosecutor charged the prisoner with stabbing him with a knife when asleep in his veranda, on the night of the 7th June last, in consequence of his being pressed for the payment of a debt due to the prosecutor. This statement was corroborated by the prosecutor's wife, who was aroused by her husband's cries. The wounds which were on the left arm, left side, and left elbow, were none of them of a dangerous character, as certified by the assistant surgeon in his evidence on oath. The prisoner denied the charge, and declared that the prosecutor in struggling with him fell upon a bottle and wounded himself. This, however, is in no way substantiated, but disproved from the nature and appearance of the wounds themselves. From the evidence of the witnesses for the defence, both parties would appear to be addicted to drinking; and judging from the evidence of the witnesses for the prosecution, who arrived almost immediately after the occurrence, there was every reason to suppose, that there had been a mutual quarrel and struggle between the prosecutor and the prisoner, in which most unjustifiably the latter made use of his knife. I concurred with the law officer in convicting the prisoner of wounding, but without any murderous intent, and sentenced him to imprisonment.

Sentence passed by the lower court.—Two (2) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner in appealing urges the same plea as that on which he founded his defence, *viz.*, that after a quarrel with him, the prosecutor fell on a bottle and thereby received his wounds. The surgeon deposes that the wounds were a deep cut on the *right* arm, about four inches in length, the muscles cut through; another wound on the left side of the chest, and also a wound on the nose.

The surgeon does not think that the wounds were of a nature which would be caused by a broken bottle, and it is in the last degree improbable that so many, in such a variety of parts of the body, could be occasioned by such an accident as that suggested by the

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n to interfere with the sentence.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND MAHOMED MOKEEM *versus* SHEIKH JHARROO.

SYLHET.

1853.

January 21.

Case of SHEIKH JHARROO.

Conviction and sentence affirmed in rejection of appeal.

CRIME CHARGED.—1st count, burglary in the house of Mahomed Mokeem, on the 11th October 1852, at night, and stealing therefrom property to the value of rupees 61-15-9; and 2nd count, privity to the above crime.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer, Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 17th November 1852.

Remarks by the sessions judge.—The prosecutor was awakened by a noise, on the 11th October, and discovered that his house had been burglariously entered. He rushed outside then and saw three men, whom he pursued; one fell, and the prosecutor seized him, and his neighbours, hearing the scuffle, came to his assistance and secured him. He was unknown to the prosecutor and his neighbours, but was afterwards discovered to be the prisoner Jharroo. A bundle containing property stolen from the prosecutor, and also a bludgeon, a bundle of pointed bamboos for piercing *tattees*, and a wedge, commonly called a *scinde-kattee*, were found where he was apprehended.

The prisoner voluntarily confessed his guilt, both before the darogah and the magistrate; but pleaded "*not guilty*" before this court, and urged in his defence that the darogah had beaten him; but he called no witnesses.

He has once before been convicted of burglary, and was imprisoned for five (5) years.

Sentence passed by the lower court.—Ten (10) years' imprisonment, with labor and irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The crime of burglary has been established against the prisoner on the clearest evidence. His appeal is rejected.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

MUSST. DOOLALEE AND GOVERNMENT

versus

SHEIKH MOHUN.

MYMENSING.

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Case of SHEIKH MOHUN.

Culpable homicide by a husband of his wife by blows and kicks. On appeal, sentence of seven years' imprisonment, deemed by no means too se-

CRIME CHARGED.—Wilful murder of Nowton Ourut.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. A. Abercrombie, assistant, with magisterial powers, Junalpore, Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 13th December 1852.

Remarks by the officiating sessions judge.—The witnesses to the fact, whose houses were close to that of the prisoner, heard at about one *puhur* of the night, on the 2nd of Assin last, a noise in the prisoner's house as if some one was beating another, and they immediately went there and saw the prisoner in the act of kicking his wife, who was then lying on the ground insensible. They, the witnesses, remarked to the prisoner that he had nearly killed his wife, when he sharply replied that he would be answerable for the consequences, and that it was no business of theirs to interfere. They then returned to their houses, and the next morning they went over to learn the result of the preceding night's quarrel, when they found the house deserted, neither he nor his wife being there. This raised their suspicion, and they began to search for them, and seeing at the distance of some three hundred cubits from the prisoner's house, some earth which had been newly turned over, they dug it up and found the body of the deceased buried there. They then began to search for the prisoner, who was apprehended afterwards by the village chowkeedar at some distance from the village in the act of making his escape. The body was sent in to the station, but on its arrival it was in too advanced a state of decomposition to admit of the civil surgeon examining it. The prisoner confessed in the Mofussil and before the magistrate, and also in this court, stating that he only gave the deceased one blow and did not intend to take away her life, and assigning at the thanna and before the magistrate, that the reason of having thus assaulted his wife was that she was in the habit of constantly running away to her parent's house, and was that night in the act of doing so when he caught her and beat her. The *futwa* of the law officer convicts the prisoner of culpable homicide, and declares him liable to punishment by *deeyut,* in which finding I concurred. This was a brutal attack by the prisoner on a harmless young woman (for she was but fifteen or sixteen years of age) and his own wife, and merely because she was in the habit of going to her parent's house, most likely to escape his ill-treatment, for her

chastity was not called into question by either the prisoner himself or any of the witnesses who gave evidence on the trial. I have therefore sentenced him to the full extent of my powers.

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Case of SHEIKH MOHUN.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor, in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner has in every stage of the inquiry and at the trial admitted causing the death of deceased. He appeals (without denying the fact) apparently for mitigation of sentence. He states that it was not his intention to kill the deceased, and that he only gave her one blow with his fist. The evidence of the witnesses prove that the statement of the prisoner is false. A number of people were attracted by the noise of beating and the cries of the deceased, and on their going there several of them saw him kicking her on the ground. The sentence is by no means too severe. The only question, which the record suggests, is whether the case should not have been submitted for a heavier sentence under Section VII. Regulation XVII. of 1817.

The appeal is rejected.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

BOODRUM TUNTREE AND GOVERNMENT

versus

RAMJEEBUN DEB ALIAS RAMJEE DEB (No. 1) AND SHEIKH BEETUL ALIAS BEETOO (No. 2).

MYMENSING.

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Case of RAMJEEBUN DEB, *alias* RAMJEE DEB and another.

Conviction and sentence affirmed on appeal.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor's master, and theft of cash and property valued at rupees 255-10¼; and 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—Burglary.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 4th December 1852.

Remarks by the officiating sessions judge.—A burglary was committed in the prosecutor's house, on the night of the 5th Assin, and property amounting to rupees 255 carried off. He, the prosecutor, did not immediately report the affair to the police, but was making inquiries himself with a view to obtain a clue to the thieves, when seven days after the occurrence, having heard that some eight anna pieces of the kind he had lost had fallen from the waist of prisoner No. 2, when struggling with a peada who had come to arrest him, and that a *jharee* (a brass drinking pot) of the kind was seen at the

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house of prisoner No. 1, he immediately reported the matter to the thanna. Accordingly the police mohurir proceeded to the spot, and arriving there two days after, he commenced his investigation, in which, although the prisoners were at the time at the thanna on another charge of theft, the following articles belonging to the prosecutor were obtained in the search of the prisoners' houses at the instance of the prosecutor, *viz.*, a *saree* given up by witness No. 1, the concubine of the first prisoner, saying that it was given to her by him, who said that he had bought it, a *jharee* or brass drinking pot was given up by witness No. 2, saying that it was pawned to him by the brother of prisoner No. 1. Witness No. 9, mother of prisoner No. 2, gave up eleven eight anna sicca pieces of the kind, and a cloth, saying that her son had given them to her to keep. This property was recognized by the prosecutor as his. And witness No. 1, further stated on the trial that she overheard the two prisoners talking together about a *kharoo* they had stolen from the prosecutor's, and witness No. 13, wife of prisoner No. 2, further deposed that she had not before seen any such property with her husband. The prisoners deny the charge, and claim the property as their own, urging that the charge has been got up against them by the prosecutor from enmity, because No. 1 was his servant and left his service owing to not receiving his wages, and No. 2, that he was asked to be a witness for the prosecutor in a certain false case but that he declined to do so. The witnesses for the defence could say but little in their favor, and could not prove the enmity set up. The jury returned a verdict of "*guilty*" against the prisoners Nos. 1 and 2, in which finding I concurred; and as they appear to have been implicated in another case of theft, and are of bad character, I consider the punishment awarded is not too much.

Sentence passed by the lower court.—Each, five (5) years' imprisonment, with labor, in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I see no reason to interfere with the sentence passed on the prisoners Ramjee Deb and Sheikh Beetul.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

MOCHEE BEWAH AND GOVERNMENT

versus

BHOLANATH MANJEE (No. 2) AND ANAND AURUT (No. 3).

MOORSHEDABAD.

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Case of BHOLANATH MANJEE and another.

The punishment proposed by the sessions judge was, under the circumstances of the case, reduced.

CRIME CHARGED.—No. 2, culpable homicide of the prosecutrix's (Mochee Bewah's) mother, named Bebee Armanee, and No. 3, accomplice to the said offence.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 9th December 1852.

Remarks by the sessions judge.—The prisoners pleaded "*not guilty.*"

The particulars of the case are as follows:

On the morning of the 9th Bhadoon last, Mochee Bewah, the prosecutrix, went to pick up cow-dung near to the *durgah* of Shahabad Sahib, where she had a quarrel with one Shohochuree Bewah.

On her way home the prosecutrix was accompanied by her mother Armanee Bebee, the deceased. The prisoner Bholanath, who was of the same caste as Shohochuree Bewah, abused Armanee Bebee, who retorted, upon which he gave her three slaps, and also struck her on the back and hand with a stick. She then threw a stone at the prisoner, which struck him on the head, when the other prisoner Anand Aurut, his mother, came and seized her by the hair. They struggled together, and the deceased falling down Bholanath kicked her on the abdomen. Both the prisoners then went away, leaving the deceased on the spot; and the prosecutrix carried her home in her arms. She never spoke after, and died the following morning from the injuries she received. She was forty years old, and had no disease or any previous quarrel with the prisoners. When the assault took place, there were present on the spot Shohochuree Bewah, Oojeer, a son of the deceased, and one Affoo.

The statement of the prosecutrix was nearly on all the material points corroborated by the eye-witnesses. Oojeer and Affoo, however, added, that they saw the deceased in a state of insensibility; and Oojeer (the brother of the prosecutrix) stated that the prisoner Anand got hold of the deceased and squeezed her neck. The deceased was also seen in a state of insensibility by Beeroo, Powalee Bewah and Doolub Bewah; and Beeroo saw the prisoners running away in the direction of their house.

The civil surgeon stated that pressure or repeated blows over the deceased's abdomen, was the cause of death.

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The prisoner Bholanath in his defence denied the charge, and stated that Shohochuree was neither his mother nor maternal aunt, so as to induce him to make the assault. The prisoner Anund Aurut also denied the charge, pleading that she had gone to work at the time. Shohochuree was neither her mother nor sister, so as to induce her to make the quarrel. She named Shohochuree as her witness, who stated that she knew Anund Bewah and saw her seize the prosecutrix's mother by the hair.

One of the assessors convicted, on violent presumption, the prisoner Bholanath of culpable homicide, and Anand Aurut, of aiding and abetting in the same. The other assessor considered both the prisoners guilty of culpable homicide.

There is no doubt in this case that the prisoner Bholanath committed a violent assault on the deceased without provocation, excepting such as might at first have arisen from hearing a woman of the same caste as himself abused, and afterwards from being struck by the deceased on the head with a stone. It is evident that the deceased died from the injuries she received. There was no premeditation in the act. It was committed on a sudden, and it is probable that he was not aware when he committed it that it would have a fatal termination. He is guilty therefore of culpable homicide. The question is the degree of punishment he deserves. My power extends only in such cases to seven (7) years' imprisonment, with labor and irons. Considering the sex of the deceased, and the nature of the assault, less than ten (10) years' imprisonment would not, in my opinion, be sufficient; and I would therefore recommend that he be imprisoned for that period in labor and irons. The assistance given by the other prisoner in the assault could have been very little; and it is likely that she rushed into the quarrel, as an old native woman would do, because her son had been abused and hit by a stone on the head. There is nothing to show that she instigated the son to assault the deceased in the shameful way he did; and I consider her guilt very slight in comparison. I would recommend that she be imprisoned for two (2) years with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—I concur in the conviction of the prisoners, but I think the punishment which the sessions judge proposes to award, is more severe than the circumstances of the case and the ends of justice call for. The fatal kick or kicks, were inflicted in the heat of a sudden quarrel; one witness speaks to the prisoner having kicked the deceased twice on the abdomen, and the other two merely to his kicking her. On the whole I think that the sentence on the prisoner Bholanath may be properly reduced to five years' imprisonment, with labor, and that on Anand, to one (1) year's imprisonment, without labor, commutable, on default of paying a fine of rupees thirty (30), to labor.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT and CHIRKOO SIRDAR

versus

WARRIS MOLLAH.

24-PERGHS.

1853.

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Case of WARRIS MOLLAH.

Assault with severe wounding. Sentence, four years' imprisonment, with fine of fifty rupees, commutable to labor.

CRIME CHARGED.—1st count, assault and wounding with intent to murder the prosecutor, on the 26th June 1852; and 2nd count, assault with severe wounding.

CRIME ESTABLISHED.—Assault with severe wounding.

Committing Officer, Mr. E. Jackson, joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 22nd November 1852.

Remarks by the sessions judge.—From the deposition of the prosecutor, there appeared to have been some dispute regarding some land which was in the possession of the prosecutor, and had been sown with indigo. The prisoner's brother Zureeb had been injuring the plant, and the prosecutor accompanied witness No. 1, Ukoor Chung Khalasee, to point out the damage. A quarrel ensued between the Khalasee and Zureeb, in the midst of which the prisoner came up armed with a hatchet and attacked the prosecutor in a most violent manner, wounding him in the side and cutting his fingers. The prisoner denied the charge, but the attack and wounding was fully substantiated by witness No. 1, Ukoor Chung Khalasee, and witness No. 2, Munuh Dally. "One wound was on the back between the 6th and 7th left rib, about seven inches in length, varying from one to one and a half nail in depth, another wound on the arm, and wounds on the fingers of the right hand, attended with compound dislocation," but none of the wounds were of such a nature as to endanger life as certified by the sub-assistant surgeon on oath. The prisoner cited witnesses to prove his innocence, and to depose to the plunder of his own premises, but nothing was elicited in his favor. I concurred with the law officer, that the second count in the indictment was proved, and sentenced the prisoner to imprisonment.

Sentence passed by the lower court.—Four (4) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner appeals, asserting that the prosecutor with others, attacked and plundered his house, and in going away got his wounds from some of his associates. In the sessions court he suggested that they were received in a fall on returning from the plundering expedition alluded to. The story is contrary to the proof on the record, and contrary to all probability. The sentence is not severe. The appeal is therefore rejected.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND KALEE SHUNKUR GOOHO

versus

DOORGA CHURN DOSS (No. 1), ISSUR CHUNDER DOSS (No. 2) AND RAM SHAGUR NUNDY (No. 3).

BACKERGUNGE.

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Case of DOORGA CHURN DOSS and others.

The prisoners' pleas in appeal being wholly unsupported, their conviction was affirmed.

CRIME CHARGED.—1st count, burglary in the house of Kalee Shunkur Gooho, in which his property of the value of rupees 765-5-0 was carried off; and 2nd count, receiving and retaining the said property, knowing it to have been stolen.

CRIME ESTABLISHED.—Burglary in the house of Kalee Shunkur Gooho, in which property to the value of rupees 765-5-0 was carried off and receiving and retaining the said property, knowing it to have been stolen.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 6th September 1852.

Remarks by the sessions judge.—It appears that on the 24th December last, a burglary was committed in the house of Kalee Shunkur Gooho of Pearpore, in zillah Furreedpore, and property carried off to the amount of rupees 765. It was inquired into at the time, but no trace of the thieves could be discovered. On the 25th February last, an anonymous petition was given to the magistrate of this district, stating that the defendant Ram Shagur Nundy (No. 3) and others, were professional dacoits and thieves, and had committed a robbery in the house of Hur Chunder Chund, in Wuzeerpore, and other places named. The thanna darogah was ordered to inquire into those cases; and when about to do so, Baluck Dass (prisoner No. 4, in Statement No. 8), came to the thanna and asked a peada to what place the darogah was going, and what inquiries he had been directed to make. The peada told the darogah, who apprehended Baluck Dass, when he stated that Ram Shagur Nundy (No. 3) was a relation of his, and a *benamee* petition having been given against him, he had sent deponent to find out what he could in the matter. On this the darogah sent at once for Ram Shagur Nundy, and he stated that he had heard that prisoners Nos. 1, 2, 4 and 5, had committed a burglary in the house of Kalee Shunkur Gooho, in Poos last. They were apprehended, and Nos. 1 and 2 confessed that they had a quantity of property, which prisoners Nos. 3 and 4 had given them, after they had been with them in a boat to Komarnuddee, in Furreedpore, in Poos last, which they gave up to the darogah. On this he sent to the darogah of Sheeb Chur, in Furreedpore, in which thanna Kalee Shunker Gooho lives, for a list of

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the property stolen from him, and sent a burkundauz to bring him in person; but as he is a very old man, he sent his gomashta Ramgutty Kur to represent him, and he at once identified the greater part of the property found in the houses of the prisoners. On these facts being reported to the magistrate, he requested me to obtain the sanction of the court of Sudder Nizamut to the trial of the case in this zillah, as the prisoners resided in it, the property had been found in their houses, and two of them were implicated in another case of burglary then pending before him. The sanction of the court, to this arrangement was accorded by their letter, No. 694, of the 27th May last, a copy of which is filed with the case.

The prosecutor Ramgutty Kur, on the part of Kalee Shunkur Gooho, deposed, that a burglary took place in his master's house on the 10th Poos last (24th December), a hole having been dug through the bottom of the wall, and three boxes opened, and their contents, consisting of money, gold and silver ornaments and clothes, to the value of rupees 765 odd annas, carried off.

The prisoner No. 1 confessed at the thanna and before the magistrate, that in Poos last he had hired a boat, at the instigation of prisoner No. 3, and gone with him and Nos. 2 and 4 to Koomarnuddee in Furreedpore, which is near to the house of the prosecutor; that Nos. 3 and 4 and another man who was with them, named Rajchunder Dass, vakeel, had left the boat at night, and returned with property, part of which they had given him, and he had pawned with his father, in whose possession the articles Nos. 47, 48, 49 and 50, were found. Prisoner No. 2 confesses to the same effect, saying that the property found in his house, Nos. 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 31, was given to him after the excursion before noted by prisoners Nos. 3 and 5.

Prisoner No. 3, denied all knowledge of the robbery in all stages of the case.

The property given up by prisoner No. 1, and the property found in the house of prisoner No. 2, previously mentioned, were clearly identified by the prosecutor and witnesses as belonging to Kalee Shunkur Gooho, and in the house of prisoner No. 3 a red silk *saree* was found, of a peculiar pattern, about which there could be no mistake, which was also identified by prosecutor and his witnesses as the property of Kalee Shunkur Gooho.

The jury found the prisoners Nos. 1, 2 and 3, "*guilty*" of the charges on which they were indicted. I concurred in this verdict and sentenced them as entered in column 12.

Ram Shagur Nundy had been previously imprisoned for three (3) years for theft, and was sentenced more severely than the others, on that account.

Sentence passed by the lower court.—Nos. 1 and 2, each, seven (7) years' imprisonment, with labor and irons, and No. 3 ten (10) years' imprisonment, with labor in irons.

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Case of DOORGA CHURN DOSS and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners Doorga Churn Doss and Issur Chunder Doss have appealed. The appeal of the third prisoner Ram Shagur Nundy was rejected by me on the 25th of November, see page 744 of the Reports for that month.

The prisoners allege, in their petition of appeal, that the property claimed by the prosecutor was surreptitiously placed in their houses; and their confessions were made under the influence of a promise of release. Their assertions are wholly unsupported, and I see no reason to interfere with the convictions and sentences.

The petition is rejected.

PRESENT:

A. J. M. MILLS, AND R. H. MYTTON, ESQRS., *Officiating Judges.*

RHUMUT MAHEE AND GOVERNMENT

versus

MUSST. MOOHURRUM BEE.

SYLHET.

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Case of MUSST. MOOHURRUM BEE.

Wilful murder by cutting off a child's penis and throwing him into a tank. Sentence, death.

CRIME CHARGED.—Wilful murder of Ramzanee.

Committing Officer, Mr. T. P. Larkins, officiating magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 24th November 1852.

Remarks by the sessions judge.—Three witnesses, Beldar Sigdar, Sadee Mahee and Boodee Mahee state, that at the end of the month of Kartick last, they were going to see their fields and heard a child cry, when looking in the direction from whence the cry came, they saw the prisoner cut off the private parts of a boy with a knife, and then throw him into a tank; that they called out, when two women, Bagee and Swagee, came up, and ultimately the prosecutor, Rhumut Mahee, who discovered the child to be his own. He, the prosecutor, took him from the tank, but the boy was then dead.

The witnesses told the prosecutor what they had seen, and he proceeded to the thanna, and on the prisoner's apprehension, she confessed the murder, and again repeated her confession before the acting magistrate. The substance of the confessions is the same as that given by the witnesses, and the cause assigned is that her child Sona, about seven years of age, had a few days before quarrelled while at play with the deceased, who was a child of about two and a half years of age, and that the prosecutor had used ill words to her in consequence.

Before this court she pleaded "*not guilty,*" and urged that her confessions had been extorted from her, and that Bagee and Swagee

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Case of Musst. Moohurrum Bee.

were witnesses to her ill-treatment. She attempted to throw the guilt upon her boy Sona, by saying she saw the knife in his hand, and that he confessed to the murder before the thanna mohurir.

The confessions of the prisoner are duly sworn to, and there can be no doubt of their having been made voluntarily. The prisoner denied before the magistrate that she had any witnesses, and I have not therefore sent for those named by her. Their depositions were taken before the darogah as to the fact of seeing the body of the deceased in the tank; but they were not examined by the magistrate or this court.

The witnesses to the Mofussil inquest were unable to read and write, and the *sooruthal* therefore is not proved. The two native doctors, who, in the absence of any surgeon, examined the body, state, that the child's private parts were cut off, and that there was a cut upon his finger and great toe, and that his death was occasioned thereby. The knife with which the deed was done is a clasp knife, having a blade of about six inches in length and it was duly produced in court.

The assessors find the prisoner guilty of wilful murder; and in this verdict I concur, and beg to recommend that the prisoner be imprisoned for life in the zillah jail with hard labor suited to her sex.

Resolution of the Nizamut Adawlut, No. 1663, *dated the* 15*th December* 1852.—(Present: Mr. A. J. M. Mills.)—The court having perused the papers connected with the trial of Moohurrum Bee, direct that the sessions judge will re-open the case and summon and examine the witnesses named by her to prove that her confession before the police had been extorted from her by ill-treatment. He will then take a fresh defence from the prisoner, and a fresh *futwa* from the law officer, and submit the proceedings to the court with his opinion, should he deem it necessary to return the case. If the sessions judge should find the prisoner guilty of the wilful murder of the child, he will record distinctly the grounds on which he proposes a mitigated sentence.

With reference to the above resolution, the sessions Judge submitted the following reply, No. 2, dated the 5th January 1853:

"For the particulars of this case I may refer the court to my letter, No. 59, dated the 30th November last, and to inform them, that in obedience to the court's instructions conveyed to me by their Resolution, No. 1663, dated the 15th December, I questioned the prisoner as to her wish to make any additional defence.

"She merely desired that three witnesses, not previously named by her, should be examined in support of her assertion that her confession had been extorted, and her request was complied with; but they, as well as the two women previously named by her, declared their ignorance of any intimidation whatever, and I feel certain that her confessions were voluntarily made.

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"The court have desired that I should mention any circumstances which I might consider favorable to the prisoner; but I can see none, and must therefore recommend a capital sentence."

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—Mr. A. J. M. Mills.—The evidence taken under the orders of this court of the 15th ultimo, in no way supports the prisoner's assertion that her *Mofussil* confession had been extorted.

She acknowledged her guilt to the magistrate, and both confessions are proved to have been freely and voluntarily made, and are corroborated by the account of the transaction as given by the three eyewitnesses.

Not satisfied with cutting off the boy's penis with a knife, she threw the boy himself alive into the water, because he cried, and where he was found dead. The only reason assigned by her for committing this inhuman act is, that her child had quarrelled with the deceased at play and the prosecutor had abused her in consequence.

She may not have had in her mind a positive intention to take the boy's life, when she mutilated him in the manner above-mentioned; but her throwing him alive into the water could only be the result of a deliberate judgment and previous malignity of heart. The sessions judge has stated in his letter of the 5th instant, that he can mention no circumstances favorable to the prisoner; I certainly see nothing to extenuate her guilt, and am of opinion that she should be sentenced to suffer death.

Mr. R. H. Mytton.—I concur with Mr. Mills in thinking that there is no ground for passing any other than a capital sentence: a warrant will therefore be issued to that effect.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GREESHCHUNDER ROY AND GOVERNMENT

versus

HARAN SHEIKH (No. 2), PEAR SHEIKH (No. 3), PREMCHAND HARREE (No. 4) AND MOKARIM SHEIKH MUNDUL (No. 5).

NUDDEAH.

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Case of HARAN SHEIKH and others.

There being nothing to shake the evidence for the prosecution, the prisoners' appeal was rejected.

CRIME CHARGED.—Dacoity in the house of the prosecutor Greeshchunder Roy, attended with the wounding of Dwarkanath Roy (witness No. 3,) and the plunder of rupees 6 (in cash,) belonging to the said Greeshchunder Roy.

CRIME ESTABLISHED.—Dacoity in the house of the prosecutor Greeshchunder Roy, attended with the wounding of Dwarkanath Roy, (witness No. 3,) and plundering property therefrom to the amount of rupees 6 (in cash).

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddeah.

Tried before Mr. J. C. Brown, sessions judge of Nuddeah, on the 6th December 1852.

Remarks by the sessions judge.—This was an ordinary dacoity. The amount plundered did not exceed rupees 6 in cash. The proof is recognition, which in my opinion is sufficient in this case. One of the witnesses received a severe wound on his head and all the prisoners were named immediately by the witnesses. The crime has been clearly proved, and the only plea the prisoner No. 3 put in was, that he is a servant of Kishoree Lall Goshain and the prosecutor is gomashta of Oomesh Chunder Roy, better known as Mootee Baboo, and they were quarrelling about making collections of rents, and that the charge has been brought against him through enmity.

The plea of enmity is also urged by the other prisoners, but they have not offered any proof. Pear Sheikh would not have any of his witnesses examined, and the remaining prisoners said they were in their houses when the dacoity occurred, but the evidence of their witnesses was unsatisfactory and unworthy of credit.

Sentence passed by the lower court.—Each five (5) years' imprisonment, and two (2) years' in lieu of corporal punishment, being in aggregate seven (7) years', with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners have all appealed. In their petition of appeal they put forward no reason for being falsely accused. The evidence against them is their recognition by the prosecutor and three witnesses. The chowkeedar reported at the thanna that the prosecutor had

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recognized them; the witnesses, to whom as well as the prosecutor the prisoners were previously known, are throughout the trial consistent; the prisoners absconded immediately after the dacoity; their defence fails altogether, and there is nothing to shake the evidence for the prosecution. I reject the appeal.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

BURKUTOOLLAH.

TIPPERAH.

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The prisoner, whom the sessions judge recommended to be transported for life, was acquitted by the Nizamut Adawlut, under Act IV. of 1849, on the ground of insanity.

CRIME CHARGED.—Wilful murder of his wife, Musst. Hookah Bebee.

Committing Officer, Mr. E. F. Radcliffe, joint magistrate of Noakolly, Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 13th December 1852.

Remarks by the sessions judge.—The prisoner is charged with the wilful murder of his wife, Musst. Hookah Bebee. The fact of her death being attributable to a fractured skull, the consequence of a blow inflicted by the prisoner with the back of a *kodal*, will be found in the course of the perusal of this report to be unquestionable. The case as regards the prisoner's guilt, hinges entirely on his state of mind when he committed the act.

The Government prosecuted, and the prisoner pleaded "*not guilty.*"

The witnesses acquainted with the circumstances of the case, for there are none to the fact, are chiefly relations of the prisoner. The first, Musst. Joona (No. 7), is the wife of his elder brother, living within the same homestead, and in a hut adjoining that occupied by the prisoner and his late wife. She deposed that while occupied in eating, she heard the prisonor enter his house, and commence searching for his clothes. His wife asked him what he was looking for, adding, "has your madness not yet left you?" The witness then heard a noise which she described as resembling the sound "*toosh, toosh,*" and doubting what was passing, she hastened into the prisoner's hut; on entering which she saw the deceased, Hookah Bebee, lying in the veranda insensible, and the prisoner standing by her with a *kodal* in his hand. A quantity of blood was flowing from his wife's head, on which the witness subsequently noticed four or five wounds; the thickness of the hair preventing her from observing the entire extent of the injuries inflicted. The prisoner threatening the witness with the *kodal*, she ran away, and gave the alarm to the neighbours, who

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hastened in and raised the deceased Hookah Bebee from the ground. The prisoner had made his escape, before Joona Bebee's return, with the *kodal* in his hand, with which, I may here observe, he rather severely wounded his own head. The witness stated that the prisoner had complained of suffering from hypochondriacal depression *(bye)* for about a year before this occurrence took place, and had been mad for the two or three immediately preceding days. At the thanna this witness made no mention of the year's suffering from *bye*, but stated that the prisoner had spoken incoherently for two or three days before the murder took place. Her statement before the joint magistrate was similarly limited.

Musst. Suleem (No. 8,) the next witness, is the wife of the prisoner's younger brother. She detailed the action precisely as her sister-in-law had done; but deposed with regard to the prisoner's state of mind, that with the exception of the two days immediately preceding the murder, he had been perfectly well during the five or six years she had known him. During those two days he had been mad and abusive, and had been exorcised by Ramjoy Joogee (witness No. 12).

The third witness, Shirkutoollah (No. 9), is the prisoner's younger brother. He stated that the prisoner had suffered from slight hypochondriasis *(kinchit bye)* for about a year, but had not been violent to any one, or discontinued his usual avocations. During the two days previous to the violence done to his wife, the prisoner was mad, but he abused no one, nor did he beat his wife. Like other madmen he talked to himself. He had been exorcised, and the Joogee who performed the ceremony said that he was possessed by an evil spirit. This witness pursued the prisoner when he ran away, and saw him inflict a wound on his own head with the *kodal*.

At the thanna this witness merely said that the prisoner was silent and dull till the day before the occurrence took place. Before the magistrate he deposed that the prisoner had never labored under hypochondriacal depression until two or three days before the murder, when he spoke incoherently.

The chowkeedar of the village, Afzul (No. 10), was the next witness. He deposed with regard to the prisoner's state of mind that during the long period he had known him he had never been otherwise than sane; that he met the prisoner while returning from market on the day before the murder, when he was perfectly well. The witness heard from the prisoner's relations on the following day that he had killed his wife in a fit of insanity.

At the thanna the witness made no reference to the prisoner's sanity or otherwise, which I find was the case also when giving his deposition before the magistrate. On the latter occasion he stated that the prisoner had murdered his wife because she refused to give him clothes.

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The next witness, Tunoollah (No. 11 in the calendar), is another brother of the prisoner. At the thanna he was not asked regarding the prisoner's state of mind. Before the magistrate he deposed that his brother had never suffered from hypochondriasis *(bye)* until a day or two before the murder, when he became garrulous. Before the sessions court the witness made a very similar statement, describing his brother as well until the two days preceding his attack on his wife, when he spoke incoherently.

The witness Ramjoy Joogee (No. 12), is the exorcist. He deposed at the thanna that he saw the prisoner two days before the murder and found him sitting mute and inactive, and that he exorcised him on that and the following day. Before the magistrate this witness stated, when summoned to see him he found the prisoner asleep. Being of opinion that his patient was suffering from *bye,* he exorcised him, and the prisoner subsequently awoke and entered into conversation with him. The witness again exorcised the prisoner on the following day.

Before the sessions court the witness stated that he found the prisoner laboring under *bye* and considered him to be possessed with an evil spirit or *bhoot.*

The witness Koromuddy (No. 13), who is unconnected with the family, made no mention at the thanna of the prisoner's mental state of health. Before the joint magistrate he deposed that the prisoner labored under slight hypochondriasis, and was, he had heard, possessed by an evil spirit.

Before the sessions court he stated that the prisoner, with whom he had been acquainted for twenty-five years, had never during that time been mad, but that he had seen him a day or two before the murder occurred, when he was dull and stupid, and had been exorcised.

The witness Azeem Beparee (No. 14 in the calendar), made no reference at the thanna to the prisoner's mental health, but deposed before the magistrate that he had heard of his being hypochondriacal, or something of the kind, a few days before the occurrence. To me this witness stated that he had known the prisoner for three or four years, during which he had been perfectly sane, and that he had never heard of *bye* in connection with him, until a day or two before the murder took place.

Mr. Allen, the civil assistant surgeon, having left the station a few days before this case came on for trial, I was deprived of the advantage of personally learning his opinion regarding the prisoner's state of mind. But he had been examined by the joint magistrate before his departure, and to that examination I shall separately refer.

The native doctor deposed that the prisoner was perfectly quiet in his behaviour in hospital, but sitting silent and dull. I asked whether he had evinced any interest in his wife, the reply was in the

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affirmative; and that on hearing of her death he wept. All the functions of life were healthily performed, and he slept remarkably well.

I proceed to advert to Dr. Allen's report of the wounds inflicted on the deceased, Musst. Hookah Bebee, and to his opinion of the prisoner's state of mind. The former were described as nine severe wounds on the head, and one, a slight one, on her arm. These were inflicted on the 29th of August, and she died in hospital on on the 12th of September. The native doctor, I may remark, stated in his deposition that the skull was fractured and the brain wounded.

The injury inflicted by the prisoner on himself was "a long jagged wound on the top of the head some eight or nine inches in length," but apparently at no time dangerous.

On the 9th of September the joint magistrate requested Dr. Allen to subject the prisoner to close scrutiny, for the purpose of forming an opinion as to his sanity or otherwise, adding that from the manner in which he had given his evidence, meaning, I presume, his defence, the joint magistrate had no cause for believing him insane or at any rate insensible to the act of doing right or wrong. Dr. Allen's answer was that although he had previously reported to the joint magistrate his impression that the prisoner was of unsound mind, he had since from daily observation remarked no symptoms of insanity. From the whole bearing of the case, Dr. Allen was, however, inclined to believe that the prisoner was not at the time he committed the deed a responsible person.

On the 16th of September, Dr. Allen was examined by the joint magistrate on the same subject.

He deposed that the prisoner had been very melancholy for some days previous, and that on his admission into hospital, he looked very much like an insane person. That he sat moping by himself, answering questions put to him but often with hesitation, as if not understanding their purport. His deafness Dr. Allen did not consider to aid him in wishing "to be thought insane as might be expected;" this remark, I do not exactly understand; but his dull and melancholy state alone led Dr. Allen to consider that he was not responsible for his acts. He slept well, ate well, and showed no sign of having committed any crime. On the fact of the prisoner's having run away after committing the crime Dr Allen laid no stress, as indicative of a sense of his having acted wrongly, observing, that insanity in its worst shape will run from a person if seen merely to pluck a flower, well knowing it was wrong, but yet would do the same five minutes afterwards. Finally Dr. Allen admitted the sanity of the prisoner's answers in court that day, but was still of opinion that he was not a responsible person at the time of committing the crime. With reference to this opinion, I would remark, that the moping and dull state to which the civil assistant surgeon alludes as alone indicating the prisoner's insanity, may, I conceive, with equal probability, be

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accounted for by a full and painful consciousness of the crime he had committed; while his anxiety to see his wife, and sorrow when he heard of her death, as deposed to by the native doctor, are not quite compatible with the indifference and unconsciousness of a man who had murdered her without being aware of the nature of the act. His occasional hesitation in answering questions is quite explicable, without referring it to want of intelligence. He is so deaf that the highest pitched voice is required to convey a question or any information to him. When at last heard, the questions or remarks were in my court always sensibly answered, and certainly, had I entered it as an indifferent spectator and been asked, from the prisoner's appearance and behaviour, what plea I considered had been set up in defence, insanity would have been the last that would have suggested itself to me. He had the inquiring look which very deaf people naturally have when knowing that the business going on around them especially regards themselves, but there was a total absence of wildness or even restlessness in the expression of his countenance. He struck me, in fact, as being naturally a stolid person, whose little share of original intelligence had been weakened and blunted by excessive deafness. There is a circumstance connected with this case which excites some doubt in my mind whether his relations have stated the entire cause of the immediate excitement under which he assaulted his wife so ferociously. They attribute it to her asking him when searching for his clothes whether his madness had not yet left him. The circumstance I allude to is to be found in his confessions at the thanna and before the joint magistrate, and is, in a degree, supported by a reference made in the evidence of his brother, the witness No. 11, to the same effect.

The prisoner stated in the Mofussil that forgetting that he had deposited rupees 21 or 22, belonging to him, with his brother, witness No. 11, to keep, he searched among his clothes and in his pillow for the money. His wife seems to have been hurt at this, and to have asked him why he showed such unkindness to her. Angry at this remonstrance, he struck her with the *kodal* in the manner already stated.

Before the magistrate he mentions in his confession having searched for his clothes in the first place, and in the second for his money, which he did not find in his pillow, forgetting that he had deposited it with his brother. Then followed the violence to which his wife fell a victim. When asked by the joint magistrate why he had wounded himself with the *kodal;* he replied that he had done so, stung by the reflection of having acted so cruelly towards his unoffending wife.

The witness No. 11 mentions, that he found rupees 21-8 in the prisoner's house, which he had taken under his charge after the occurrence of the murder, at the desire of the thanna mohurir.

The point is on the whole not very clear, but it is one that requires to be mentioned. 1853.

The Mahomedan law officer acquits the prisoner, on the ground of insanity. January 22. Case of BURKUTOOLLAH.

I am however not equally satisfied that his state of mind was such that he was unconscious and incapable of knowing at the time of doing the act that it was one forbidden by the law of the land; that his mental condition was one of perfect health, I consider to be doubtful; but there is a distinction between the hypochondriacal depression, which renders its subject liable to fits of violent irritation on the occurrence of any exciting cause, and that absolute insanity which infers a total irresponsibility for acts committed under its influence. It is obvious, I think, that the prisoner and his wife had quarrelled on the morning in question regarding his clothes or money, or both, and my opinion is that this quarrel acted on the prisoner's previously excited state of mind to such a degree as to lead to the commission of the act for which he is under trial. I would recommend his being imprisoned for life, with labor in irons and in transportation.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner was tried nearly four months after the perpetration of the murder with which he stands charged. It is very possible that his appearance and behaviour during the trial were not such as to lead any one to suppose that a plea of insanity had been set up, and yet that he may have been of unsound mind at the time of committing the murder. The whole tenor of the evidence of the prisoner's relations and neighbours, coupled with the inadequacy of the motive assigned for the deed, is such as to impress the mind with the belief, that the prisoner had not been in a right state of mind for some days previous to the murder. The medical officer, too, who evidently considered the prisoner to have got better after his admission into hospital, twice, once by letter and once on oath before the Magistrate, recorded his opinion, judging from what he had seen of the prisoner and from all the bearings of the case, that at the time he committed the deed, the prisoner was not of such sound mind as to be responsible for his acts. That the prisoner killed his wife is beyond doubt, but as I think there are the very strongest grounds for believing that he did so while in a state of mental derangement; I acquit him on the ground of insanity. The sessions judge will bring the case to the notice of Government, under Act IV. of 1849, Section III.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT AND LALL BEHAREE LAHA

versus

KHOSAL SHEIKH (No. 1), ZUMIRUDI SHEIKH (No. 2), HURI KUNWUR (No. 3, APPELLANT), NUDDEAR CHAND KUNWUR (No. 4, APPELLANT), GHOLAM LAHA (No. 5, APPELLANT), GOPAL LAHA (No. 6, APPELLANT) AND ASIRUDI SHEIKH (No. 13).

East Burdwan.

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Case of Huri Kunwur (appellant) and others.

The prisoners should, in the opinion of the Nizamut Adawlut, have been convicted of murder.

CRIME CHARGED.—Wilful murder of Manik Laha.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 13th October 1852.

Remarks by the sessions judge.—This is an indictment for wilful murder on the prosecution of the son of the deceased, conjointly with the Government. The prosecutor deposes that he came to Burdwan to lay an information regarding the contempt of a revenue process issued under Regulation VII. of 1799, and the escape of the two prisoners, Huri Kunwur (No. 3), and Gholam Laha (No. 5), arrested under it, and while there, was informed that his father, who pointed them out to the officer in charge of the writ, had been murdered. He adds that he returned home immediately, and found matters as they had been represented, and that there has been a long standing feud between those prisoners and his father and himself. The prisoners plead "*not guilty.*" The prisoner Asirudi Sheikh (No. 13), is committed on a supplementary calendar, not having been apprehended at the time the others were made over for trial. Two persons give direct evidence to the murderous attack, and depose that they accompanied the deceased at about 10½ P. M. to the village of Bhalkhi, distant about five miles, whither he was proceeding with the view of recalling the person in charge of the diet-money required for the prisoners supposed to be arrested under the summary suit process, the news of their escape not having transpired, and were met by the prisoners in a lonely p[illegible] of the road lying through a jungle, about midnight, who on perceiving them, and ascertaining that the deceased was of the party, attacked him violently with clubs and fists at the bidding of the prisoner Huri Kunwur (No. 3), and left him after the assault in an insensible and dying state. The night appears to have been a bright moonlight, and the witness Nufur Kunwur so near the assailants at the time of the attack, that he received two blows from a club dealt by the prisoner Gopal Laha (No. 6.) The other witness, Sonaulah Sheikh,

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was further removed from the spot, but details the assault and outrage with the same minuteness and circumstantiality as Nufur, both speaking to the existence of hostile feelings between the prisoner and the deceased and his party. This latter individual appears to have gone on to Bhalkhi after the departure of the prisoners, and brought back the *phareedar* of that village and some *ghatwals,* for the purpose of rendering assistance to the deceased, but that individual was almost *in articulo mortis* by the time they arrived, and expired in a few hours. This evidence is clear and consistent and corroborated by the testimony of the *phareedar*, Elahi Buksh, who details the wounded and dying condition of deceased when first seen by him a short time after the attack. Another link in the chain of the evidence is the statement of the witness Kurim Sheikh, who met the prisoners Huri Kunwur (No. 3), Gholam Laha (No. 5) and Gopal Laha (No. 6), on the night in question at half-past 9, going in the direction where the assault took place. The evidence of the civil surgeon shows that deceased's skull was severely fractured, and that that injury was the cause of death. The collector's peon in charge of the writ for the arrest of the prisoners Huri Kunwur and Gholam Laha, deposes, that he duly served it, and was on his way to Burdwan with the prisoners in custody when they were rescued by two brothers of the prisoner Huri Kunwur and carried off. The remaining witnesses to the prosecution prove the confessions of the prisoners Khosal Sheikh (No. 1) and Jumirudi Sheikh (No. 2,) before the police and at the court of the deputy magistrate. These admissions implicate all the prisoners and ascribe to them a personal and active participation in the outrage. The records in their detail are remarkably confirmatory of the entire train of evidence adduced on the trial. All the prisoners deny the charge before this court, the two first repudiating both their confessions, and plead *alibis,* with exception to the prisoner Asirudi Sheikh (No. 13), whose defence is that he walked into Boodbood in company with the prosecutor on a date long subsequent to the occurrence, and therefore could not possibly have been a *particeps criminis.* Thirteen witnesses were examined for the defence, but their evidence is worthless, their knowledge of dates and events being confined to the details of the *alibis* pleaded, and barren with regard to every other, even to those of the past and coming thirty-six hours. The *futwa* of the law officer convicts the prisoners of culpable homicide, and declares them liable to discretionary punishment by *deeyut.* I concur in the finding, and having no doubt as to the prisoners' guilt, sentence them accordingly. To prove that the attack was not premeditated, and that consequently the higher charge of murder could not be sustained, I think it right to give the following explanation of the manner in which the occurrence took place. The two prisoners arrested under the collector's writ, went to Bhalkhi after effecting their escape, and

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were joined there by the rest during the day, and were all returning home at night to avoid notice, when they encountered the deceased and his party in their journey to that village in the manner above detailed. The prisoners' and prosecutor's party both reside at Gwaldanga, and the meeting took place accidentally as the one approached and the other departed from Bhalkhi. This is a very well ordered commitment, and reflects great credit on the deputy magistrate of Boodbood.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with hard labor and irons, in the district jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The prisoners were charged with murder in this case; and as it appears in evidence that they attacked the deceased with clubs, and knocked him down and fractured his skull, which occasioned his death, and this without provocation or excuse, I can see no reason why they should not have been convicted of the crime charged; the fact that the prisoners met the deceased by chance when they attacked him, does not affect the nature of their crime; it is murder to knock down and kill a person met by chance, as much as if he was met purposely. As the sessions judge has convicted them of the lower grade of crime, I see no reason to interfere.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

MUSST. ONOOMONEE GWALNEE AND GOVERNMENT *versus* SHEIKH TONIE (No. 11) AND SHEIKH BENG (No. 12).

MYMENSING.

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The evidence of some boys, which had been improperly taken, was set aside. The conviction was, however, upheld on the remaining evidence.

CRIME CHARGED.—Wilful murder of Nobeen Chand Chokra.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate, Jumalpore, Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 15th December 1852.

Remarks by the officiating sessions judge—On the 8th of Assin last, the deceased, a boy of about eight years of age, employed as a cowherd, was grazing his cows near a rice field belonging to prisoner No. 12, and in the afternoon of that day some of the cows had gone into the field. The prisoners on observing this ran up to the deceased from their house, which was near the field, as he was taking away his cows, severely assaulted him, knocked him down and left him there. This was seen by witnesses Nos. 1, 2, 3, 4 and 5, who were also grazing their cattle at some distance, stating that they distinctly saw the prisoners in the act of beating the deceased with

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their hands. The evidence of the witnesses Nos. 3, 4 and 5 was taken without oath, as from their tender age they were not aware of its nature, but they fully corroborated what the other witnesses deposed to. In the evening when witness No. 1 had taken his cows home, he went straight to the house of the prosecutrix, the mother of the deceased, and informed her of what had taken place. The mother on observing that her son had not returned home, although it was getting late, requested witnesses Nos. 2 and 12 and another person, to go and look for him, which they did, and they brought back the body of the boy, which was lying near the field. The body was sent into the station for examination by the civil surgeon, who deposed before me that the injury the boy received was very severe; that death was caused by an effusion of blood on the brain, the effect of one or more blows on the right side of the back part of the head, and that the scalp and upper part of the neck were also severely bruised; that the injury might have been inflicted with a *lattee*, but that it was quite possible to have been caused by severe blows of the fist; that there were no symptoms of previous disease; and that after such an injury the boy would probably die within twenty-four hours. The prisoners denied the charge, No. 12 urging that his field was under water at the time; and they named witnesses, but their evidence did not avail them. The *futwa* of the law officer convicts the prisoners of culpable homicide and declared them liable to punishment by *deeyut*, or price of blood, in which I concurred. This was a cowardly attack on a poor little boy of tender age, who was unable to defend himself, and on the slightest provocation; and as homicides in this district are of most frequent occurrence, I have considered it my duty to sentence the prisoners to the extent of my power.

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—The evidence of the witnesses Nos. 3, 4 and 5 should not have been taken at all as they could not be sworn: Circular Order, 1st February 1828. The direct evidence of the other witnesses, however, is sufficient to establish the guilt of the prisoners. There is nothing in the record to lead the court to distrust it, and it is confirmed by the circumstantial evidence. The prisoners in their petition of appeal allege enmity on the part of one of the witnesses, but there is no evidence to support the allegation. The order of the sessions judge is confirmed.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

24-PERGHS.

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Case of SHEIKH MEAJAN.

A prisoner convicted in the sessions of perjury, in making two statements, contradictory of one another, acquitted on appeal. The statements recorded in his evidence not supporting the charge.

GOVERNMENT

versus

SHEIKH MEAJAN.

CRIME CHARGED.—Perjury, in having, on the 8th and 9th June 1852, deposed, on solemn declaration, before the magistrate of the 24-Pergunnahs, in the case of Abdool Odood *versus* Doondee and others, charged with maliciously maiming the prosecutor, that with the exception of Doondee, Moojdeen and Pooty, he did not recognize any of the persons whom he saw escaping from the spot where the prosecutor was maimed ; and having again, on the 28th and 30th June 1852, in the same case, deposed on solemn declaration, before the magistrate aforesaid, that amongst the persons escaping aforesaid, he had recognized the prisoner Gocool Porkait, one or other of such depositions being false, and both being contradictory of each other, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 12th October 1852.

Remarks by the sessions judge.—The Government was prosecutor in this case. It appears that in a certain charge of wounding, pending before the magistrate, the prisoner, who was a witness, distinctly recognized three individuals, and swore that he could *not* recognize the others, who escaped. On a subsequent date he swore that he did recognize a *fourth* person and named him. The prisoner denied the charge on which he was arraigned, but his contradictory depositions were proved by the mohurirs who wrote them, and by witnesses who were present at the time. I concurred therefore with the law officer in convicting him of perjury and sentenced him to imprisonment.

Sentence passed by the lower court.—Three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Mytton.)—The prisoner is charged with perjury in making on solemn affirmation two statements contradictory of one another, *viz.*, that on one occasion he deposed *that with the exception of three persons named, he did not recognize any of the persons whom he saw escaping*, and that on another occasion he deposed that among the persons escaping *he recognized* a fourth, *viz.*, Gocool Porkait.

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The depositions alluded to do not support the charge. What the prisoner said on the first occasion was "Doondy, Pooty and Moojdeen were there, and there were two or four others; *I did not see their faces;* they ran away."

A person may recognize another or see enough of his figure and dress to identify him, without seeing his face, therefore the statement does not necessarily imply that the deponent had not recognized those running away. On the prisoners being confronted with Cocool Porkait, his statement was, "I (on the previous occasion) stated that some people ran away; this man was among the number, I do not know his name."

The rendering of this statement in the charge also falls short of being faithful, and the prisoner was not allowed an opportunity of explaining by what mark, sign or appearance he was able, if he had not seen his face, to state that the person before him, Gocool, was among those that ran away.

It is quite possible that he might have given a satisfactory explanation if he had been asked the question. The charge against the prisoner is not in my opinion established. From his defence in the sessions court,* it would appear as if he did not understand what he had been charged with stating falsely.

The conviction is quashed and the prisoner will be released.

* "*I did not mention Gocool's name in the foujdaree.* I know not why I am charged with guilt."

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

BYKUNTNATH ADDUCK AND GOVERNMENT

versus

JUDOONATH GHOSAL (No. 1), SREEMUNTO TANTEE (No. 2), SHEIKH GOPAL (No. 3), SHEIKH KALOO (No. 4), MUDDUN DASS (No. 5), PUTIT GHOSE (No. 6) AND NUSSEEROODDEEN DOOLAY (No. 7).

24-PERGHS.

1853.

January 25.

Case of JUDOONATH GHOSAL and others.

Dacoity. Appeal against a sentence of ten years' imprisonment, preferred by two *mookhtars* who did not appear, although called on three separate days, rejected.

CRIME CHARGED.—1st count, Nos. 1 to 7, dacoity and plunder of property, valued at Company's rupees 221-2-0, attended with wounding of Ramdhun Adduck, uncle to the prosecutor; and 2nd count, No. 7, having in his possession a silver armlet, No. 1, being a part of the plundered property, knowing it to have been acquired by dacoity.

CRIME ESTABLISHED.—Accomplices in dacoity with wounding.

Committing Officer, Mr. E. Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 17th September 1852.

Remarks by the sessions judge.—It appeared from the deposition of the prosecutor that on the 20th Jeyt last, at midnight, he went out of his house for a particular purpose towards the east, and at a little distance he observed about twenty persons assembled under a tree to the west, with weapons in their hands. Being alarmed he returned, and on approaching his house discovered that dacoits had entered it and were plundering his property. He called out to the villagers, some of whom came to his assistance and accompanied him in pursuit of the dacoits, who were escaping from the premises; two of them being wounded and apprehended on the way, and the others in a jungle where they had taken refuge. In this spot were discovered a pistol, powder, and shot, some brass utensils, and a silver ornament was taken from the person of prisoner No. 7, Nusseerooddeen Doolay, which property the prosecutor recognized as his own, the whole amount of property plundered, being valued at about rupees 221. It further appeared that besides the prosecutor and his females, his cousin, witness No. 19, Doorgaram Adduck, and his uncle, witness No. 20, Ramdhun Adduck, were the only persons sleeping in the house that night, the latter of whom was beaten on the head and face. The prosecutor pointed out the prisoners as the parties who were apprehended as described; distinguishing those who received wounds from their pursuers. All the prisoners denied the charge on which they were arraigned in this court. In the Mofussil they all admitted their being accomplices in the dacoity. No. 1,

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Judoonath Ghosal, and No. 4 Sheikh Kaloo, saying that they did not actually go to the prosecutor's house. The admission of prisoner No. 1, Judoonath Ghosal, before the magistrate, was to the same purport; the others denied the charge. The prosecutor's statement was corroborated by several witnesses, chowkeedars and villagers, who accompanied him in pursuit of the dacoits and apprehended the prisoners as they were escaping. The several witnesses pointing out and identifying the particular prisoners whom they had apprehended; the mark of a wound on the back of prisoner No. 5, Muddun Dass, being still visible. Witness No. 19, Doorgaram Adduck and witness No. 20, Ramdhun Adduck, who were sleeping in the house that night, deposed to the fact of the dacoity and the plunder of property; the latter certifying to his being beaten and seized and kept down by two of the dacoits, and to his seeing the prisoners the next morning under custody, No. 5, Muddun Dass, with a wound on his back, and No. 6, Putit Ghose, on his foot. Prisoner No. 1, Judoonath Ghosal, cited witnesses to prove that he had arrived accidentallly in the village where the dacoity occurred, on his route to another place, when he was apprehended by a chowkeedar and burkundauz. Prisoner No. 2, Sreemunto Tantee, also cited witnesses to prove he was going to purchase cloth at a neighbouring market, when he was apprehended. Prisoner No. 3, Sheikh Gopal, cited witnesses to prove that he and the four last prisoners had arrived accidentally in the village, where one of these, prisoner No. 5, Muddun Dass, came into collision with the villagers, which ended by their all being apprehended. Prisoner No. 4, Sheikh Kaloo, prisoner No. 5, Muddun Dass, prisoner No. 6, Putit Ghose and prisoner No. 7, Nusseerooddeen Doolay, all cited evidence to the same effect. The witnesses for the four last prisoners were not to be found, and nothing was elicited in favor of prisoners Nos. 1 and 2, Judoonath Ghosal and Sreemunto Tantee, calculated to shake the evidence for the prosecution. I convicted all the prisoners of being accomplices in dacoity with wounding, and sentenced them to imprisonment accordingly.

Sentence passed by the lower court.—Each ten (10) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The appeal has been preferred by the prisoners, purporting to be through two *mookhtars*. They have been called three times on separate days in this court, but have not appeared. The proof against the prisoners as noted in the abstract is conclusive. The appeal is rejected.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

BHAUGULPORE.

1853.

January 28.

Case of SHAM TELEE and others.

Evidence to recognition of persons and property, rejected on the ground of extreme improbability.

SHAM TELEE (No. 1), MUCKHOO CHOWKEEDAR (No. 2) AND FUQEERA CHOWKEEDAR (No. 3).

CRIME CHARGED.—1st count, burglary and theft, attended with personal injury, to the amount of rupees 7-6-5; and 2nd count, receiving and possessing stolen property, knowing at the time of receiving it that it had been obtained by burglary and theft, attended with personal injury.

CRIME ESTABLISHED.—Burglary and theft, attended with personal injury, to the amount of rupees 7-6-5.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 10th November 1852.

Remarks by the sessions judge.—The prisoners plead "*not guilty.*"

Hurkoo Sahoo, the sufferer, is a cultivator and shop-keeper, in the village of Simrofnda. On the night in question he was sleeping in a veranda, when being awoke by a noise inside the house, he went and saw the prisoners (with whose persons he was previously acquainted) making off through a *scind* hole they had perforated in the wall, by which they must have entered; on this he cried out loudly, when the three prisoners came round to the house entrance and dragged him out and beat him.

It is also proved by witnesses Nos. 2 and 3, the chowkeedar of the *mohulla* and his brother, who came up on hearing Hurkoo's cries, that they lit *mussals*, bound Hurkoo and his wife, and endeavoured by threats to make them discover where their money was concealed. In this they seem to have failed, making off with only a small amount of property, some of which has been recovered from the houses of the prisoners and duly identified as the property of Hurkoo Sahoo.

Prisoner Sham Telee states in defence that on the night in question when the chowkeedar Gundowree (witness No. 16) knocked at his door, he was at home and answered him. That sufferer's *ghelaf* and his, if placed together, could not be distinguished one from the other. The reason of his being charged in the present instance is that he was imprisoned once before for six months for theft. Two seers of cotton are said to have been taken from Hurkoo's house, while that found in his does not amount to half a quarter of a seer. Muckhoo merely denies the charge. Fuqeera attributes enmity to Hurkoo on

account of some trifling transaction in which he, Fuqeera, refused to let Hurkoo have some grass. 1853.

The witnesses for the defence fail to establish any thing in favor of the prisoners. January 28.

Case of SHAM TELEE and others.

The jury find a verdict of guilty on the first count of the indictment as set forth in the calendar; in which I concur.

I am satisfied of the guilt of the prisoners in having first burglariously entered the house of Hurkoo with intent to steal; and after the first alarm, finding that there was no one to oppose them but a decrepit old man, in having again entered his house by the door and endeavoured with threats and violence to extort money from him and his wife. Both Hurkoo (No. 1) and Gowree (No. 2) brought in with them to the station hospital marks of the violence charged against prisoners. Sham Telee confesses to having once received corporal punishment and having been once imprisoned for four months for theft, which last is borne out by the record. The other two prisoners are chowkeedars of neighbouring boats. I sentence them all to five (5) years' imprisonment, with labor in irons, and to make good the value of the unrecovered property amounting to rupees 6-3-7-1.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I am not satisfied with the evidence in this case: the prosecutor says that he was sleeping in his veranda, and hearing noise, went into the house, and saw three men escape by the hole in the wall they had entered by; that afterwards they came round at the door with *mussals* and *lattees*, and seized and beat him and ill-treated his wife to make them show their property; the prosecutor says he recognized them, and some chowkeedars assert that they came and recognized the prisoners too, but the whole account of the occurrence is most improbable, and by no means so supported by evidence as to induce me to believe it; small portions of property of no value are stated to have been afterwards found in the prisoners' houses, and some are recognized by the prosecutor. I think the whole of the evidence false, and acquit the prisoners Sham, Muckhoo and Fuqeera.

PRESENT :

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MUNNOO SHEIKH.

MOORSHEDABAD.

1853.

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Case of MUNNOO SHEIKH.

The dying declaration of the deceased, being unsupported by any strong or corroborative proof, the Nizamut Adawlut acquitted the prisoner.

CRIME CHARGED.—Wilful murder of Kurrimbux Sheikh.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 9th December 1852.

Remarks by the sessions judge.—The prisoner pleaded "*not "guilty.*"

The particulars of the case are as follows :

In this case the Government was prosecutor, and there were no eye-witnesses to the fact ; but the circumstantial evidence was of the strongest kind, and on that evidence the guilt of the murder was brought home to the prisoner.

On the night of the 2nd Assin last, the deceased Kurrimbux was sleeping on a *muchan* in the *ahrut* of one Panjah, where he was a chowkeedar. Juggut Beparee (witness No. 2) was sleeping on a chest in the same place. About midnight the deceased from outside cried out that he was murdered, and Juggut hearing the cry rushed out to see what was the matter and called out—"There goes a thief." Petumber Roy (witness No. 3) who was sleeping in another part of the *ahrut*, hearing Juggut's exclamation, rushed out at the same time. They found the deceased on the ground wounded, and on asking him how it had happened he replied—" He has killed me, and fled." Jeebloll, the village chowkeedar (witness No. 1) was on his rounds at the time, and hearing a noise joined them. They took the deceased inside the *ahrut*, and he there told them that Munnoo, the son of Joomna, had wounded him ; that he had had an illicit connexion with his (deceased's) wife, and had quarrelled with him two or three days previously. Petumber stated that he heard the deceased mention that when the quarrel occurred the prisoner threatened to take his life ; and this agrees with the statement made by the deceased shortly before his death ; but this was not stated by Petumber before the darogah or the magistrate. Jeebloll chowkeedar then went to search for the prisoner at his house, but he was not to be found there, and his father told him that he was in the house of his concubine ; accordingly he went there and apprehended the prisoner, who seemed to be agitated, but denied that he had wounded Kurrimbux when questioned. The chowkeedar left the prisoner under charge of Petumber Roy and gave information at the thanna.

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The darogah made inquiries into the case on the spot the same night, after taking down the statement of the deceased. Early in the morning the house of the prisoner's concubine was searched, when a wet cloth covered with spots of blood was found, which was claimed by her mother as her own property, a *hunswah* produced in the court was found in a ditch close by the *ahrut* where the deceased was wounded.

Bisooah Bewah (witness No. 10) identified the *hunswah*. She said she had often seen it in the house of Bunoo, the mother of prisoner's concubine, Gendra Awrut, who was the wife of the deceased, and from whom some time previous to the wounding he had separated on account of her connexion with the prisoner, which led to quarrels between them.

The *muchan* in the *ahrut* where the deceased was wounded, was stained with blood.

The severe wounds inflicted upon the deceased are described by the witnesses to the *sooruthal*.

The wet cloth stained with blood was claimed as her own by Gendra Awrut, both in the criminal and in the sessions court, and the blood was caused she said by a complaint she had.

The assistant magistrate, Mr. Morris, took down the dying declaration of the deceased. It corroborated the facts abovementioned, with reference to his wife's conduct, her criminal intercourse with the prisoner, his quarrel with the prisoner, the prisoner's threat of taking his life, and the wounds he received in the assault made upon him, which he declared were inflicted by the prisoner with a *choora*. If the injuries were inflicted by the *hunswah*, as is most probable, it is easy to conceive that in such a sudden onslaught at night the deceased might have mistaken the instrument for a *choora*, or any other cutting-weapon.

The civil surgeon in his examination stated that the wounds upon the deceased might have been inflicted by the *hunswah* produced, but although of a very dangerous nature, from *mortifying*, were indirectly the cause of death, and that had the lungs not been diseased, and had the deceased been in a healthier state of body, he thinks it possible the wounds would not have mortified, and he might have recovered.

As there were no eye-witnesses to the murderous assault upon the deceased, the case rests upon his own statement, and this statement carries great weight, if it is proved to be a *dying* declaration.

The declaration taken by the assistant magistrate was taken, as he has stated in writing at the bottom of it, after Kurrimbux was reminded of his *dangerous* state.

I was not quite satisfied with this explanation; and in addition to the evidence of the two witnesses Nos. 6 and 7, who attested it, took also the evidence of the foujdaree mohurir (witness No. 15) who

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wrote it. Though it is not proved that the statement was made by the deceased in the full belief that he was dying, and was therefore in the English acceptation of the term a dying declaration, yet it is evident that those who were present did not think he could live, and that he was duly warned of the danger of his state. I cannot therefore but believe that he was under the impression that he could not live, and although he happened to survive four days after the declaration, this ought not to lessen the weight of the testimony. Accepting it as his dying declaration, which the circumstantial evidence so strongly supports, I agree with the assessors, who sat with me on the trial, in convicting the prisoner on violent presumption of the murder of the deceased; but with reference to the peculiar circumstances of the case, I would recommend that capital punishment be remitted, and that he be sentenced to be imprisoned with labor and irons, in transportation beyond sea for life.

I notice that the darogah in his *sooruthal* omitted to mention the blood-stains on the *muchan*, where the deceased was sleeping, and where the violent assault upon him must have been committed, and also whether the *hunswah* when first discovered was stained or not with blood. Moreover that the magistrate's letter of the 17th September, to the civil surgeon, is answered by that officer on the 20th September. In cases of severe wounding, as well as of death, the earliest possible report should be submitted by the civil surgeon, and it would be better in all such serious cases that his examination on oath should be taken as soon after the submission of the report as possible. There was no very great delay in this case; and I take only the opportunity while on this subject of alluding to it, as in some cases, where a long interval has occurred, written notes of an examination must be depended upon, and the memory may be at fault on points arising out of it. A copy of this report as usual, will be sent to the magistrate for his information.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—There are no circumstances in this case which would justify, on conviction of the prisoner, the remission of capital punishment. It was an act deliberately and maliciously committed, but I am of opinion, that the proof is too weak and unsatisfactory to warrant the conviction of the prisoner. The dying declaration is admissible; the declarant was reminded of the actual danger of death, and the statement committed to writing has been duly proved, but evidence of this kind is to be received with caution, because it is not subject to cross-examination, and in this case there is no substantial corroboration of the deceased's declaration. The wet cloth with stains of blood upon it, is claimed by the mother of the deceased's wife as her own property. The *hunswah* or the reaping-hook is merely identified as having been seen in her house. The prisoner resided in her house, which was also the abode of the deceased and

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his wife, and had a criminal intimacy with the latter, and these circumstances no doubt raise a strong suspicion against him; but the particulars of the violence, to which the deceased has spoken, occurred under circumstances of surprize, in a dark room, in the middle of the night, when the deceased was asleep, which are well calculated to lead to a mistake as to the identity of the prisoner; and as the declaration of the deceased is unsupported by any strong corroborative proof, I cannot place implicit reliance on it. I therefore acquit the prisoner and direct his release.

PRESENT:

W. B. JACKSON, ESQ., *Judge*.

GOVERNMENT

versus

SHEWBURT DOSADH, WHO CALLS HIMSELF LUTCHMUN DOSADH.

SHAHABAD.

1853.

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Case of SHEWBURT DOSADH, who calls himself LUTCHMUN DOSADH.

Conviction of burglary on evidence of eye-witnesses to the prisoner having been seen running away from the spot.

CRIME CHARGED.—Accomplice in the fact in burglary and theft of property to the amount of rupees 70, attended with the wilful murder of Chuthee Tehlee.

Committing Officer, Mr. J. T. Worsley, deputy magistrate of Saseeram, Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 4th January 1853.

Remarks by the sessions judge.—This is a supplementary case.

The particulars of the outrage were thus detailed in the letter of the sessions judge of the 10th January 1848, No. 6.

" The case is forwarded for the orders of the superior court as being one beyond my competence to pass sentence in.

" The prosecutor resides in the village of Munjeeree, and was sleeping at home on Sunday night, the 10th of October, when his house was burglariously entered by several individuals, and property to the extent of about rupees 70 stolen therefrom.

" The brother of the prosecutor, by name Chuthee Tehlee, some fifty-five years of age, was sleeping in another apartment of the same house, and on hearing a row got up, and in confronting the robbers, was violently wounded on the head in two places by two *ghurrasas*, from the effects of which he died on the following date.

" The prisoners were fully identified at the time by three eye-witnesses, who came to the spot on a hue and cry being raised, and the wounds from the *ghurrasas* are proved to have been inflicted by Odit Dosadh and Pertaub Dosadh, from the testimony of witnesses Nos. 1 and 2.

" A brass *lotah*, valued at rupees 2, identified by the prosecutor and his witnesses as part of the stolen property, was also sent in to sup-

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port the third charge against Odit Dosadh, in whose house it was found on the following Wednesday.

"The inquest paper discloses two wounds on the head of the deceased, who was quite well prior to the wounding.

"The prisoners plead '*not guilty*,' and call a vast number of witnesses to prove *alibis*, but in this they, one and all, entirely fail.

"The *futwa* of the law officer acquits Odit Dosadh of the third charge, and in this I entirely agree, as I am not satisfied at the manner in which the *lotah* was declared to be found in the prisoner's house. He himself was not present at the search, and disclaims the property *in toto*, whilst the witnesses were too widely scattered at the time to render their evidence such as would bring home the third charge legally to the prisoner.

"The moulvee, however, convicts Odit Dosadh and Pertaub Dosadh of the murder of Chuthee Tehlee, and of the burglary and theft in the prosecutor's house, and the remaining prisoners of being accomplices in the murder, burglary and theft; and concurring therein, I beg to recommend that Odit Dosadh and Pertaub Dosadh be sentenced to imprisonment in transportation beyond sea for life, and the remaining prisoners to fourteen (14) years' imprisonment in the zillah jail with labor and irons.

"The prisoner Pertaub Dosadh has before been in jail for six months on a charge of burglary and theft."

The prisoner eluded justice up to the 4th December 1852, when he was apprehended.

His presence and participation in the burglary and murder, is established by the same evidence by which the guilt of the other prisoners was proved.

The *futwa* convicts him of the crime, and declares him subject to *seeasut*.

I accordingly beg to recommend that the prisoner be imprisoned with labor in irons for fourteen (14) years from the date of the sentence.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The witnesses swear to having recognized the prisoner Shewburt when running away from the prosecutor's house immediately after the burglary had taken place. Nothing is urged in defence. I convict the prisoner Shewburt of being concerned in the burglary attended with murder, and sentence him to seven (7) years' imprisonment, with labor and irons.

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT
versus
CHUNDUN RAI (No. 1), TEKA ALIAS TAKEMUN (No. 2) AND HURTAL RAI (No. 4).

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Case of CHUNDUN RAI and others.
In a case of perjury by false personation and subornation thereof, the sentence passed by the sessions judge was, under the circumstances of the case, reduced.

CRIME CHARGED.—1st count, Nos. 1 and 2, perjury; No. 1 with having, on the 10th June 1852, deposed, under a solemn declaration of Act V. of 1840, before the deputy magistrate of Sewan, that his name was Sewburn Rai, son of Doobree Rai, and a resident of Mouza, and that the other witness's name was Ruttee, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; and No. 2, with having, on the 10th June 1852, deposed, under a solemn declaration of Act V. of 1840, before the deputy magistrate of Sewan, that his name was Ruttee and not Takemun, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case; and 2nd count, No. 4, suborning the above perjury.

CRIME ESTABLISHED.—Nos. 1 and 2 perjury, and No. 4, subornation.

Committing Officer, Mr. J. F. Lynch, deputy magistrate of Sewan, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 16th August 1852.

Remarks by the sessions judge.—The perjury and subornation, with which these prisoners are charged, are so fully stated in the charge, that it is almost needless to enter further into the case, especially as they each and all plead "*guilty.*" It appears that during the investigation of a case of severe assault pending in the deputy magistrate's court at Sewan, the two first prisoners were brought forward in lieu of two persons who were witnesses to the defence, and in their names gave evidence upon oath. Hurtal also admits having brought the men to give evidence; but Sumode (released) has all along denied having had anything to say to them. The other two prisoners, who are Gorait and chowkeedar, have been sent up on suspicion of having been cognizant of what was going on, and of not having reported it; but they both deny their guilt; and though they as well as Sumode may possibly be guilty, still as there is not sufficient evidence to bring the charge home to them, they have all, in concurrence with the *futwa*, been acquitted and released. The case of the prisoners Chundun, Hurtal and Teka, is however quite clear, and there is ample proof of their guilt; and as the *futwa* convicts them all, they have in accordance with it been sentenced as noted.

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Sentence passed by the lower court.—Three (3) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —In the petition of appeal, the prisoners do not deny their guilt, they merely state that they were led into the commission of the crime of which they have been convicted through ignorance. Their own admissions, however, show that they arranged the false personation advisedly enough, but the evidence actually given in the case of assault by prisoners Nos. 1 and 2, was not of a nature to affect the judgment of the court. They simply stated that they knew nothing about the case, beyond the fact that there had been strife between the parties. Had their evidence been given directly either in support of the accusation or to the exculpation of the prisoners, I should not have deemed the punishment awarded too severe, but under the circumstances of the case, I think imprisonment with labor for one (1) year is sufficient. The order of the sessions judge is accordingly modified to that extent.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

BHEEM DUTT OORAY (No. 1), MOHESH MYTEE OORAY (No. 2), GYANUNDO BORAL, ALIAS GYAN THAKOOR (No. 3), RAMSOONDUR BYRAGEE (No. 4), BACHARAM BHATTACHARJEA (No. 5), KARTICK KAWRAH (No. 6), SHUSTY BAGDEE (No. 7), JOODISTEE CHUCKERBUTTY (No. 8), RAM COOMAR CHUCKERBUTTY (No. 9), KHETRO MOHUN CHUCKERBUTTY, ALIAS KHATOO THAKOOR (No. 10) AND KALOO MOOSULMAN (No. 11).

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The confessions and depositions of the approvers being corroborated, the prisoners were convicted and sentenced to transportation for life.

CRIME CHARGED.—1st count, dacoity in the house of Damoodhur Chunder, at Julsora, on the 16th February 1850, and plundering therefrom property to the amount of rupees 1,862-12-0; and 2nd count, having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 4th January 1853.

Remarks by the additional sessions judge.—On the 16th of February 1850, a dacoity took place at the house of Damoodhur Chunder, a weaver, in the village of Julsora, in the thanna of Ghatal, in that part of the district of Hooghly which is under the deputy magistrate of Jehanabad. It was the next day reported to the

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darogah at the thanna, which is half a *coss* distant, and it was said that the gang consisted of thirty or thirty-two persons, and that two guns were fired; that rupees 1,862-12-0 worth of property was carried off; and that Kumul Bhat, one of the villagers, had been recognized among the dacoits. That man was apprehended and confessed guilt before the police, and implicated eleven other persons, whose houses were searched, but no property was found in them. On the 4th of March, the owner of the house gave his evidence before the deputy magistrate, who was investigating the case at Jehanabad, where, on the 6th of March, the prisoner No. 4, Ramsoondur Byragee, arrived. He had been apprehended in Calcutta, on account of another dacoity, by the darogah of Maniktollah, and on the 5th of March he confessed to having committed a dacoity at Julsora. It appears by the record that news of the Julsora dacoity had been sent off on the 18th of February, by a circular proceeding from Jehanabad, to the magistrate of the 24-Pergunnahs, and the memorandum of the confession gives no information which the circular proceeding did not contain.

On the 8th of March 1850, Ramsoondur confessed before the deputy magistrate of Jehanabad, and he implicated the prisoners Nos. 1, 8, 6, 2 and 5, and the approvers Nos. 2, 1 and 3, and also one Suddanund Chuckerbutty. It appears by the record that he was then sent back to Allipore, and through his means Suddanund was apprehended in the district of Howrah, and the latter having been taken to the thanna of Maniktollah, he there confessed that he was one of the dacoits. He was then taken to Jehanabad, and there he again confessed, but on the 28th of March the villagers and the Calcutta men were all released. In his confessions Suddanund implicated the approvers Nos. 1, 2 and 3, and the prisoners Nos 1, 2, 4, 5, 6, 7 and 8.

There are three approvers, who all state that they committed the dacoity, and that they all, as well as all the prisoners, were engaged in it. They started in a gang of more than twenty men in two boats from Chandpal Ghaut in Calcutta, and went to Ooloobariah by water, where they landed in the evening of the same day, and the next day they travelled in small parties through Gopeegunj to Ghatal, which place is about two *coss* from the scene of the dacoity. They expected to find the Ghutuks at Ghatal, but were disappointed by them, and consequently they remained the whole day in that town, which is a large place on the bank of a navigable river, and consequently the number of strangers did not attract the notice of the darogah and other police, who are stationed in the town. I mention these circumstances, as they show that in addition to the acquaintance which the approvers might have previously had with the prisoners, they had ample time in the three days' expedition to become acquainted with the names and persons of each of them. On the second night after they arrived at Ghatal,

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they all joined in committing the dacoity, and afterwards having met together in a plain, they separated and some returned in small parties to Calcutta, and others went to their homes. There is a report of the darogah of Maniktollah, which has been proved and put on the record. It bears the signature of the magistrate of the 24-Pergunnahs, dated the 15th of February 1850, or the day before the dacoity was committed. The purport of the report is that Ram Thakoor, who, the approvers state, was the leader of their gang, had gone forth with his men, about twenty-five in number, to commit some crime in the Howrah or Hooghly district. Among the men who had gone forth with him, are mentioned the prisoners Nos. 1, 2, 4 and 8, as well as the approver Sindoo Mytee. I consider that it proves the general truthfulness of the story of the approvers, although it is not evident that the individual prisoners were engaged in the dacoity.

There is evidence of neighbours that a dacoity took place and the records put that point beyond doubt. The evidence of the approvers is sufficient for the conviction of the prisoners, if it can be trusted, and the report of the darogah that the gang had gone forth is strong presumptive evidence that Ram Thakoor's gang committed the dacoity. The confession of Ram Soonder might have been sufficient evidence for his conviction; but as he was not committed on his confession, it is necessary to consider what could be the reason why he and the other confessing man, called Suddanund, were not committed for trial. The only reason however that I can suppose is, that the deputy magistrate did not know which of the confessing prisoners to believe, *viz.*, the one who lived in Julsora or the two men from Calcutta.

The following observations may be made on the case respecting the degree of confidence to be placed in the deposition of the approvers. Of these eleven prisoners, Ram Soonder Byragee mentioned only five in his confession, and Suddanund mentioned only seven in his confession; yet all these approvers have mentioned every prisoner. The answer to this is, that the approvers were bound, if they hoped for a conditional pardon, not to spare any friend, but to tell all they knew against every man. This answer, however, is not perfectly satisfactory. The darogah of Maniktollah reported the names of fourteen men who had gone forth in the gang of Ram Thakoor, but the names of two of them, *viz.*, Sona Myra and Motoor Ghose, do not appear in the confession of any approver, unless the former of them is also called Sonatun Dutt, which name has been taken by all the approvers; and the names of two others, *viz.*, Bujja Tamlee and Jadoo Dome, are taken by only one approver, and each one has accused men whom the others have not named. The answer is that considering the number who composed the gang, such errors were likely to occur two years after the dacoity had taken place; and as the late magistrate of Hooghly, before whom the confessions were

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written, has deposed that he had no reason to believe that any approver knew what persons any previous confessing approver accused as his accomplice in committing the dacoity, and according to the record the prisoners were all accused by the different approvers long before the former were apprehended, I think that the evidence must be trusted, unless the prisoners could bring forward other evidence which would throw mistrust on it.

The prisoners have urged different statements in their defence, chiefly that Sindoo Mytee has a grudge against them, but not one of them has called a witness on any account, not even to character or to show what means he had of gaining a livelihood. I find all the prisoners guilty of both charges, and propose that they be all sentenced to transportation beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The fact that the approvers, when confessing so long after the dacoity, did not all name exactly the same persons as having been concerned in it, is in itself a proof that there was no collusion, and that the confession of each was made without a knowledge of what had been said by his accomplice. The confession of Ramsoondur tallies in regard to the particulars of the dacoity with the statement of the prosecutor; which again corroborates, and is corroborated by the confessions and depositions of the approvers, who swear to the fact of the prisoners having been concerned in this and several other dacoities. I see no reason whatever to distrust these depositions, and concurring in the finding of the sessions judge, I sentence the whole of the prisoners, as proposed by him, to imprisonment for life in transportation beyond sea.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SOODHARAM CHOWDRY (No. 9, APPELLANT), DEBEE ACHARJEA (No. 10), MANICK PANJA (No. 11), RASSOO PANJA (No. 21, APPELLANT) AND POTEET MANJEE (No. 22).

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Case of SOODHARAM CHOWDRY, (appellant), and others.

Sentence of ten years' imprisonment for dacoity confirmed, strong presumptive proof admitted to be sufficient to support the conviction.

CRIME CHARGED.—1st count, Nos. 9, 10, 11, 21 and 22, dacoity in the shops of Kessob Chunder Misser, Sreeram Mahinda, Ram Chand, Joho and Obheeram Mundle, and wounding Gooroochurn and Krishna Chowkeedars, and plundering therefrom property to the amount of rupees 3,675-9-0, on the night of the 18th May 1852 ; 2nd count, prisoners Nos. 11 and 21, receiving part of the plundered property in the above dacoity, *viz.*, that marked No. 14, and those from Nos. 23 to 30, as consisting of some brass *kulsees*, &c., and concealing them.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 17th September 1852.

Remarks by the additional sessions judge.—In this case of dacoity the houses of four men, who live in the village of Ramjewunpore, are said to have been plundered. The property which was lost is valued at Company's rupees 3,675, and is said to have been enough to have loaded twenty or twenty-four coolies.

The crime took place on the night of the 18th of May, and the police having been attracted by the noise went to the scene of crime. They were a large number, for there is a *pharee* in the village, which contains three thousand houses, but as the dacoits had bows and arrows, they were afraid to go near them until they had finished plundering. They then attacked and wounded some of them, and caused them to drop about Company's rupees 180 worth of the plunder. Two of the dacoits, *viz.*, Surroop Dome, who afterwards died of his wounds, and Soodharam (No. 9) were very much cut up and were secured on the spot, and afterwards the police went to the houses of many of the villagers and apprehended them, on the ground of their having been recognized among the plunderers. The prisoner Soodharam lives about two miles from the scene of crime. He was apprehended on the spot, and was wounded with eight severe sword-cuts. Another man, one Surroop Dome, was also apprehended on the spot, and received eleven sword-cuts, in consequence of which he died. Most of these wounds must have been inflicted after the men

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were helpless. The prisoner's defence is that he went to the village to buy manure for his fields, and owing to a storm coming on he passed the night at one of the houses which was plundered, but he called only one witness, who could say that he did go to buy manure, and he said nothing about his passing the night there. The prisoner Debee Acharjea (No. 10) lives at Sherbay, about a *coss* from Ramjewunpore. Five witnesses state that they recognized him among the dacoits, but I have doubts of the truth of this. I think it more probable from the number of police who collected during the dacoity (there were eleven of them), that they received some intimation about the dacoity and respecting some of the people who were to be engaged in it, and consequently that this man was apprehended on the following day, soon after which he is said to have made a confession before the police, which could not be proved on the trial. However, on the 25th of May, he made a confession before the assistant magistrate, that he went forth with the dacoits to the village in which they committed the dacoity, but he said that he did not himself enter the village. However, his having gone with the gang into the immediate vicinity of the scene of crime, makes him a principal. The prisoner Manick Panja (No. 11), lives at Amdan, about a *coss* from Ramjewunpore. He was apprehended on the 22nd of May owing to his name having been mentioned in the confession of Debee Acharjea (No. 10.) He had three wounds on his person, which were examined by the civil surgeon on the 26th of May; and it is his opinion that they were sword-cuts which had been inflicted about a week before that time. He confessed to having been engaged in the dacoity, first before the police on the 22nd of May, and again before the assistant magistrate on the 25th of May. The prisoner Rassoo Panja (No. 21) is a son of Manick Panja (No. 11.) They live together, and were both apprehended at the same time. Rassoo had a wound on his right hip, which he said was accidentally inflicted with a spade, but he could bring no evidence to show this, and the civil surgeon believed it to have been inflicted with a sharp cutting instrument, such as a sword, for the edges of it were clean. A brass *ghurra* was found in their house, which one witness said belongs to one of the men who were robbed, but the prisoners claim it as their own, and it is highly improbable that as they were both wounded they should have kept such plundered property in their house. I convict him on violent presumption, as he and his father both had sword-cuts. His father was wounded in the dacoity, and he cannot show how he obtained his wound. The prisoner Poteet Manjee (No. 22) lives in Ramissurpore, as far as a man's voice can be heard from the scene of crime. He was apprehended on the 26th of May, but he was said to have been a dacoit by Debee Acharjea, when he confessed on the 19th of May. It appears by the record that at first he could not be found,

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which was the cause of the delay in apprehending him. On the 26th of May he confessed before the darogah that he came into the village with the dacoits, but ran off when the police came, and on the 29th of May a prisoner of the same name, whose person could not be recognized by any witness, but who, there can be no doubt, was this prisoner, confessed before the assistant magistrate that he was present when the dacoits collected and when they plundered.

Sentence passed by the lower court.—Each, ten (10) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoners Soodharam (No. 9) and Rassoo Panja (No. 21) appeal. The proof against the former is conclusive, and his defence has not been supported by any proof. From the confessions of other prisoners, it appears that he was a leader of the party. Rassoo Panja pleaded an *alibi*, and that the wound on his hip was inflicted with a *kodalee* by his father. This wound is described in the surgeon's report to the magistrate to have been two and a half inches long, half an inch deep and one inch broad, and in that and his deposition to the magistrate, to have been a clean cut, not such as would be produced by a *kodalee*. The evidence tendered to prove an *alibi* did not support it, and no proof of the wound having been inflicted by the father was adduced. The prisoner's father was concerned in the dacoity, and admitted that his wounds were received on that occasion. The presumption is strong that the son was also engaged in the dacoity, and this is corroborated by the confessions of Debee Acharjea and Poteet. The appeal is rejected.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

KALACHAND DASS TEORE (No. 1), KHETRO BAGDEE (No. 2), MOTEERAM THAKOOR (No. 3), DHOOKEE-RAM BAGDEE (No. 4), HURRISCHUNDER GHOSE (No. 5), TINCOWREE BAGDEE (No. 6), ISHUR BAG-DEE (No. 7), NOBIN BAGDEE (No. 8), SONA BAGDEE (No. 9), MUDOOSOODUN DOME (No. 10), GOBER-DHUN DOME (No. 11), MUDOOSOODUN BAGDEE (No. 12), MOHUN TEWARRY (No. 13, APPELLANT), BUSOODEB DOOLLIA (No. 14), PREMCHAND MAN-JEE (No. 15), KARTICK COWRAH (No. 16), GOPAL MUSSULMAN (No. 17), SUBDUL DOME (No. 18), MODHOO BAGDEE (No. 19) AND GOBIND MUNDUL (No. 20).

24-PERGHS.

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Case of MOHUN TE-WARRY (appellant), and others.

Going forth to commit dacoity. Sentence of seven years' imprisonment confirmed.

CRIME CHARGED.—Going forth with a gang of robbers for the purpose of committing robbery.

CRIME ESTABLISHED.—Going forth with a gang of robbers for the purpose of committing robbery.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 30th September 1852.

Remarks by the sessions judge.—The Government was prosecutor in this case. The prisoners denied the charge on which they were arraigned, in this court and also before the magistrate. In the Mofussil, prisoner No. 1, Kallachand Teore, prisoner No. 2, Khetro Bagdee, and prisoner No. 20, Gobind Mundul, admitted the fact of their going forth for the purpose of committing a dacoity, the first prisoner having arranged the plan in conjunction with prisoner No. 20, whom he had met in the Allipore jail, and naming several of the prisoners as his accomplices. Prisoner No. 20, Gobind Mundul, alluded also to the conversation in jail with prisoner No. 1, and their making arrangements for a dacoity, in which he appears to have been the principal manager, but he did not, it seems, proceed afterwards with the other prisoners, and was not apprehended with them in Tolly's Nullah, but subsequently, in consequence of the information furnished by the confessions of prisoners Nos. 1 and 2. It appears that early on the morning of the 14th June, the Kally-Ghat darogah happened to be on the banks of Tolly's Nullah for a particular purpose, when he observed a suspicious looking boat passing, with a number of persons on board. In conse-

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quence of his suspicions he despatched his burkundauzes, who stopped the boat with the prisoners from Nos. 1 to 19 on board, and discovered a pistol, a *kolharee*, hammer, a flint and steel, and powder and shot. Witness No. 1, Gosain Doss Bagdee, (admitted as an approver, by the magistrate) pointed out all the prisoners and deposed to the fact of their having proceeded from a *ghaut* near the Burra Bazar through the *nullah*, for the purpose of committing a dacoity in the Soonderbunds; prisoners Nos. 1 and 20, Kalachand Teore and Gobind Mundul, being the principal leaders in the scheme; to their returning with the intention of going to Oottumchand Baboo for some further expenses on the road; and to their being apprehended, that is, prisoners Nos. 1 to 19, by the Kally Ghaut darogah in Tolly's Nullah, with a pistol, powder and shot, and other implements on board. This Oottumchand Baboo is described as residing in the Burra Bazar, and said to be a receiver of stolen property; prisoner No. 3, Moteeram Thakoor, being his servant. Witnesses Nos. 2, 3 and 4, Moojreim Burkundauz, Jameer Burkundauz and Peeroo Burkundauz, and witness No. 5, Hanif Khan darogah, all pointed out the prisoners, and deposed to their apprehension as described—Nos. 1 to 19, in a boat in Tolly's Nullah, and No. 20, subsequently from information furnished by the other prisoners. Prisoner No. 1, Kalachand Teore, and prisoner No. 2, Khetro Bagdee, complained of being ill-treated by the police. Prisoner No. 3, Moteeram Thakoor, declared he was sent by his master, Oottumchand Baboo, with prisoner No. 1 and other coolies to take up his master's boat which had sunk in the Sunderbunds. He cited witnesses to certify to his good character, and to his being a servant of Oottumchand Baboo. Prisoner No. 4, Dhookeeram Bagdee, and prisoner No. 6, Tincowree Bagdee, declared they were hired to take up a sunken boat. Prisoner No. 5, Hurrishchunder Ghose, declared he happened accidentally to be at Kally Ghaut at the time, and was unjustly apprehended. Prisoners No. 7, Ishur Bagdee, No. 11, Goberdhun Dome and No. 12, Mudoosoodun Bagdee, declared they went to Kally Ghaut for religious purposes and were apprehended unjustly. Prisoners No. 8, Nobin Bagdee, No. 9, Sona Bagdee and No. 10, Mudoosoodun Dome, declared they were hired to get up a sunken boat. Prisoner No. 13, Mohun Tewarry, urged that he happened to be at Kally Ghaut accidentally and was unjustly apprehended. Prisoner No. 15, Premchand Manjee, prisoner No. 16, Kartick Cowrah, No. 17, Gopal Mussulman, No. 18, Subdul Dome and No. 19, Modhoo Bagdee, declared they were hired by prisoners Nos. 3, and 1, Moteeram Thakoor and Kalachand Teore, to get up a sunken boat. Prisoner No. 20, Gobind Mundul, declared he had been unjustly apprehended, and cited witness to certify to his good character. Nothing was elicited in favor of this prisoner or prisoner No. 3, Moteeram Thakoor,

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calculated to shake the evidence for the prosecution. The jury considered the charge proved against prisoners Nos. 1 to 19, inclusive. It is true that prisoner No. 20, Gobind Mundul, was not apprehended at the same time with the other prisoners, but it is quite clear that he was concerned with them, proceeded a short way, and then left them as ascertained by his confession, the evidence of witness No. 1, Gosain Doss, and the confessions of the other two prisoners. There is no doubt that prisoner No. 3 was a servant of Oottumchand Baboo, who is well known to the Calcutta police, and has been apprehended on several occasions on various charges. Taking into consideration the very suspicious circumstances under which the prisoners Nos. 1 to 19 inclusive, were apprehended, the Mofussil confessions of prisoners No. 1, Kalachand Teore, No. 2, Khetro Bagdee and No. 20, Gobind Mundul, and the evidence of witness No. 1, Gosain Doss, I convicted them all upon the charge upon which they were indicted upon the strongest presumption, and sentenced them to punishment accordingly.

Sentence passed by the lower court.—Each seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner No. 13 has now appealed. He states that he had gone to Kally Ghaut to perform *pooja*, and was looking at the police apprehending the other prisoners, when he was by mistake taken up as one of the number. To the darogah he admitted accompanying the other prisoners for a job, but what job he could not say, and in the sessions his story was that he had been to deliver a letter at Chitla, and was by mistake taken up as he passed Kally Ghaut.

The prisoner's appeal is deserving of no consideration and is rejected.

PRESENT :

A. J. M. MILLS, ESQ., *Officiating Judge.*

MADAREE MUNDUL AND GOVERNMENT

versus

DOOBAH MANJHEE (No. 23), BURA GUNGARAM MANJHEE (No. 24), LOCHUN MANJHEE (No. 25), CHOTA GUNGARAM MANJHEE (No. 26), BHEEKAREE MANJHEE (No. 27), BYESTUMAH MANJHEE (No. 28), ROOPCHAND MANJHEE (No. 29), NEELAH MANJHEE (No. 30) AND UBHEERAM MANJHEE (No. 31).

RUNGPORE.

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Case of DOOBAH MANJHEE and others.

The proof against the prisoners being considered adequate, their conviction and sentence were upheld on appeal.

CRIME CHARGED.—Riot, attended with severe wounding of Baboolla and slight wounding of Baroo Khan and Chikah, and with carrying off the said Chikah, brother of the prosecutor ; and 2nd count, accomplices and aiding and abetting in the commission of the said crime.

CRIME ESTABLISHED.—Nos. 23 and 25, riot, attended with severe wounding, and Nos. 24 and 26 to 31, accomplices and aiding and abetting in the commission of the said riot, attended with severe wounding.

Committing Officer, Mr. R. H. Russell, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 16th November 1852.

Remarks by the sessions judge.—From the statement of the prosecutor and the evidence adduced, it was proved that between Chikah, (brother of the prosecutor) and Bheekaree Sirkar, talookdar of Hyatpore, in which village the prisoners resided, a dispute formerly arose regarding the right of fishing in the *bheels* of Gopan and Neecoreah.

The case was tried under Act IV. of 1840, and decided in favor of prosecutor on the 26th April 1851. What was the cause of the present outrage is not apparent, but it is in evidence that a body of about sixty men, among whom were the present prisoners, who have been fully identified, proceeded in boats on the 31st July to the house of the prosecutor, which they riotously attacked, beating the prosecutor and wounding Baboolla, Baroo Khan and Chikah, the last named of whom they carried off, and who has not yet been found. The prisoners evaded apprehension for a time, but were subsequently arrested by the nazir of the joint magistrate's court.

From the deposition of the medical officer, Baboolla was so severely wounded, that his recovery for some time was very doubtful.

In their defence the prisoners all resort to *alibi*, which their witnesses do not prove.

The jury, by their verdict (orally given) found the prisoners Nos. 23 and 25, "*guilty*" of the first count, and the rest of the prisoners "*guilty*" of the second count, in which I concurred.

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Case of DOOBAH MANJHEE and others.

Sentence passed by the lower court,—Nos. 23 and 25, each five (5) years' imprisonment, with labor and irons, and Nos. 24 and 26 to 31, each three and a half ($3\frac{1}{2}$) years' imprisonment without irons, and a fine of thirty (30) rupees, or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners have appealed. They urge enmity between their landlord and the landlord of the prosecutor, and plead that the accusation is altogether false, but there is no reason to doubt that a serious riot did take place, and that Baboolla was severely wounded. Without any material discrepancies, the eye-witnesses, twelve in number, corroborate the prosecutor's statement, and identify the prisoners. None of the prisoners are identified by less than three witnesses, and their evidence has been consistent and fully brings home the charge to the accused. I see no reason to interfere with the conviction and sentence.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

RAMPERSHAD THAKOOR (No. 7) AND ATMA THAKOOR (No. 8).

SHAHABAD.

1853.

January 29.

Case of RAMPERSHAD THAKOOR and another.

The prisoner's plea in appeal rejected. His conviction for a crime committed in 1834, upheld.

CRIME CHARGED.—Riot, attended with culpable homicide of Nowul Roy.

CRIME ESTABLISHED.—Riot, attended with culpable homicide of Nowul Roy.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 10th June 1852.

Remarks by the sessions judge.—This is a supplementary calendar.

The facts of the case which occurred in 1834, are thus described in Statement for May of that year.

" A lad named Jysree Roy was in his own *khet* looking after his crop. The prisoners, who belong to mouza Goura, were in the adjoining *deearah* cutting grass; some of them began wantonly to pluck some of the crop of the former; he remonstrated, and on his trying to hinder them, they gave him a beating. The deceased Nowul Roy was in his field a few *russees* off, and hearing the boy cry out, ran up to help him. It does not appear from the evidence that on his part anything more than altercation ensued; nevertheless he was set upon by the whole of the Goura people, about thirty in number, with *lattees,* and so severely handled that he died before the next

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January 23.

Case of RAMPERSHAD THAKOOR and another.

morning from the effects of the beating. The prisoner No. 1 was one of the chief aggressors, having been among those who beat the lad Jysree after having first meddled with his crop; the other two prisoners beat the deceased only. The prisoner No. 2 upon the trial showed indications of idiotcy, which, from further inquiry made by the magistrate at my direction, would seem to have been assumed.

"Two other prisoners were brought to trial and sentenced on the 16th May of this year."

The presence and active participation of the prisoners now before the court, is clearly established by the evidence of the eye-witnesses, three of whom named them from the commencement as parties concerned.

The defence of the prisoner is the usual plea of *alibi.*

Of three witnesses examined on behalf of the prisoner No. 7, one disclaims all knowledge of the circumstances, two depose thus that in the month of either Aghun or Poos, the prisoner went to graze his buffaloes in the village, but they do not recollect the year.

The witnesses of prisoner No. 8, speak in support of the defence, but the evidence is not of a nature to weaken that of the prosecution.

The *futwa* convicts the prisoners of the crime charged and declares them liable to *seeasut.*

Sentence passed by the lower court.—Each, four (4) years' imprisonment, and a fine of rupees twenty-five (25), or labor.

For remarks by the Nizamut Adawlut, see following case of Teeluckdharee Thakoor, *alias* Teelukbeharee Thakoor and another.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

TEELUCKDHAREE THAKOOR, ALIAS TEELUCKBEHAREE THAKOOR (No. 12) AND RUGOOBUR THAKOOR ALIAS RUGOO THAKOOR (No. 13).

SHAHABAD.

1853.

January 29.

Case of TEELUCKDHAREE THAKOOR, *alias* TEELUCKBEHAREE THAKOOR and another.

The prisoners' pleas in appeal rejected, their conviction for a crime committed in 1834, upheld.

CRIME CHARGED.—Riot, attended with culpable homicide of Nowul Roy.

CRIME ESTABLISHED.—Riot, attended with culpable homicide of Nowul Roy.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 28th May 1852.

Remarks by the sessions judge.—The circumstances of this case were thus described in the statement for May 1834.

"A lad named Jysree Roy was in his own *khet* looking after his crop. The prisoners, who belong to mouza Goura, were in the adjoining *deearah* cutting grass; some of them began wantonly to pluck up some of the crop of the former; he remonstrated, and on his trying to hinder them, they gave him a beating. The deceased Nowul Roy was in his field a few *russees* off, and hearing the boy cry out, ran up to help him. It does not appear from the evidence that on his part anything more than altercation ensued; nevertheless he was set upon by the whole of the Goura people about thirty in number, with *lattees*, and so severely handled that he died before the next morning from the effects of the beating. The prisoner No. 1 was one of the chief aggressors, having been among those who beat the lad Jysree after having first meddled with his crop; the other two prisoners beat the deceased only. The prisoner No. 2 upon the trial showed indications of idiotcy, which, from further inquiry made by the magistrate at my direction, would seem to have been assumed."

The presence and active participation of the prisoners is fully and satisfactorily established by the evidence.

They had eluded the vigilance of the police since 1834, and have now been secured by the confiscation of their property.

The defence of prisoner No. 12, contains two pleas; *first,* that he was a mile off when the affray occurred, *secondly,* that his name is Teeluckbeharee Thakoor not Teeluckdharee Thakoor.

The first plea fails altogether, as the witnesses can speak neither to date nor year.

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Case of TEELUCK-DHAREE THAKOOR, *alias* TEELUCKBEHAREE THAKOOR and another.

The second is affirmed by witnesses who say that there was a another Teeluckdharee, who ran away when a warrant was issued for his arrest and has never since been heard of. Others say he is dead; and all, that he has neither house nor home, and has left no vestige behind him.'

A thousand witnesses deposing to such a statement, would in no way affect the direct and positive evidence of the eye-witnesses to the identity of the prisoner. The defence of prisoner No. 13, raises the same pleas with the same results. The *alibi* fails totally. The other plea—that he is not Rugoobur but only Rugoo, and that the Rugoobur has disappeared since he was summoned, is utterly undeserving of notice.

I would remark that all old offenders subsequently apprehended, appear to have established this mode of defence; and as the "*other* "*man*" has always died or disappeared, they have little difficulty in persuading friends to support their statement, which cannot easily be disproved or entail mischief upon them.

The prisoners are head men of the village of Thekapore, but live in Goura, the residence of the other prisoners, and it is probably through their influence that they have evaded arrest.

Their names were mentioned by two of the witnesses before the magistrate on the first trial of the case, though not sent in by the darogah, and their participation has been consistently sworn to throughout. But they do not appear in the depositions taken before the darogah.

On being questioned as to this omission in 1834, the witnesses declared they had given their names, and knew not why they were suppressed.

It is by no means improbable that their position secured the favor of the darogah."

The *futwa* convicts both prisoners of the crime charged, and they are sentenced to four (4) years' imprisonment and a fine in lieu of of labor of rupees fifty (50) each.

Remarks by the Nizamut Adawlut.—On this and on the preceding case of Rampershad Thakoor and another.—(Present: Mr. A. J. M. Mills.)—These are two supplemental trials in sequence to that of Geycharam Roy *versus* Preag and others, decided on the 16th of May 1834.

The prisoners have eluded the vigilance of the police since the above period, and the confiscation of their property has now caused them to surrender themselves, and stand their trial.

They have all appealed, pleading *alibi*. Teeluckdharee Thakoor and Rugoobur, further allege that their names are Teeluckbeharee Thakoor and Rugoo Thakoor, respectively; and they are not the persons who were implicated in the riot.

The *alibis* have failed, and the record of the case shows that the names of the fathers of the persons, who absconded in 1834, are

identical with the names of the fathers of the prisoners as acknowledged by themselves. This plea too, which is otherwise unsupported, has therefore entirely broken down.

The evidence to the identity of the prisoners and their participation in the riot, is distinct and satisfactory, and I see no reason to question the propriety of the conviction. I reject the appeal.

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Case of TEELUCKDHAREE THAKOOR, *alias* TEELUCKBEHAREE THAKOOR and another.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH MOOJDEEN (No. 1), DATARAM MUNDUL PURRIAL (No. 2), DEVEE BAWOOL (No. 3) AND SHERE MAHOMED JEMADAR (No. 4).

24-PERGHS.

1853.

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Case of SHEIKH MOOJDEEN and others.

1. Perjury. Sentence of three years' imprisonment, against three prisoners, approved.

2. Subornation of perjury. The mere fact of the false evidence being favorable to a person, is not sufficient to justify the conviction of that person on the above charge.

CRIME CHARGED.—1st count, Nos. 1 to 3, perjury, in having, on the 17th September 1852, deposed on solemn declaration before the magistrate of the 24-Pergunnahs in a certain case of riot and plunder, in which Government was prosecutor and Shere Mahomed Jemadar and others were prisoners, that the Shere Mahomed Jemadar, then present as a prisoner, was not the Shere Mahomed Jemadar to whose participation in the riot they had sworn in a former deposition in the same case on the 27th February 1851, and that there was another Shere Mahomed Jemadar, resident in or near the village of Ruskhallee, to whom they had alluded, there being in effect no other Shere Mahomed Jemadar in or near Ruskhallee than the one then present as a prisoner, and their statements in the former depositions having reference to him and to no other, and such depositions being therefore wilfully and deliberately false, on a point material to the issue of the case ; and 2nd count, No. 4, subornation of the above perjury.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 7th January 1853.

Remarks by the additional sessions judge.—It appears that a person called Shere Mahomed Jemadar was prosecuted for a riot, and that the prisoners Nos. 1, 2 and 3, deposed, on the 27th of February 1852, that he was a leader in it. Shere Mahomed Jemadar, could not be apprehended, and the property of this Shere Mahomed Jemadar was consequently attached and was eventually sold. Afterwards this prisoner was apprehended (as appears by the record) near the magistrate's court, and was supposed to be the Shere Mahomed

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Jemadar who had absconded, but the three persons (*viz.*, the prisoners Nos. 1, 2 and 3,) who had accused Shere Mahomed Jemadar, deposed on oath, that they had accused another person and not this man. They were consequently committed for perjury, and several witnesses have proved that this is Shere Mahomed Jemadar whose property was attached ; and although it is allowed that there was a man who lived in the same neighbourhood called Sheikh Sheroo, yet he was a poor man and quite unknown, and would not have been a leader in the riot, and had not the title of jemadar ; and there is no reason to suppose that he is the person who was accused, although there is room to argue the point, as the prisoner No. 4 lives in Muhunpore, and the wording of the evidence of Devee Bawool, might signify that Shere Mahomed Jemadar lived in the division of the village Doodbishalee, as well as others whom he accused, but it is shown that some of them besides this Shere Mahomed Jemadar did not live in that hamlet, and consequently it cannot be supposed that he intended to state that all whom he accused lived in Doodbishalee. The general character of the evidence for the defence is bad ; for there are many witnesses who had only heard that there was another Shere Mahomed in the neighbourhood, and none of them could give any account of the man, or what relations or friends he had, or where he was gone ; besides which the attachment of this man's property fully satisfies me that he was the man who was accused, and consequently I convict the prisoners Nos. 1, 2 and 3, of perjury ; and as the crime was committed for the sole advantage of the prisoner No. 4, I convict him of having suborned them to commit it.

The law officer thinks that the case is not proved ; but in my opinion there is violent presumption of the guilt of all ; and I propose that each be sentenced to three (3) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Mytton.)—The charge of perjury against Nos. 1, 2 and 3, is fully established. Not so that of subornation of perjury against Shere Mahomed. It rests solely on the inference to be drawn from the false evidence given, being exculpatory of him. But this presumption is not strong enough to justify a conviction. In other cases* of this description on record in which a conviction was had, the accused had *produced* the witness deposing falsely. In this the accused did not even cite them. On the apprehension of Shere Mahomed, the former witnesses were sent for to identify him, and when they were examined on the point of identity, they deposed that the man before them was not the person they had alluded to in their former deposition. It is quite possible that in the long interval that had intervened, they had made up their quarrel, and that the witnesses of

* *Vide* case of Bungsee Barooy and Kaseenath, volume V. Nizamut Reports, page 109.

their own accord deposed falsely, or it is possible that the more influential landholders who were contending had adjusted their differences, and that their influence had been exerted. The subornation by the prisoner Shere Mahomed himself is not by any means certain. He is therefore acquitted. The sentence proposed by the sessions judge to be passed against the other prisoners is approved.

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Case of SHEIKH MOOJDEEN and others.

PRESENT:

J. DUNBAR, ESQ., *Officiating Judge.*

GOVERNMENT

versus

JUDOONATH KOOMAR MOOKHTAR.

HOOGHLY.

1853.

January 29.

Case of JUDOONATH KOOMAR MOOKHTAR.

On a charge of forgery and fraud, the prisoner was acquitted, the evidence for the prosecution being considered insufficient for conviction.

CRIME CHARGED.—Causing a forged *razeenama* in a case under Act IV. of 1840, to be written and to be presented to the joint magistrate of Serampore, before whom the case was pending, by a man who he knew was falsely personating Sheikh Aftoo, the prosecutor in the case.

CRIME ESTABLISHED.—Causing a forged *razeenama* in a case under Act IV. of 1840, to be written and to be presented to the joint magistrate of Serampore, before whom the case was pending, by a man who he knew was falsely personating Sheikh Aftoo, the prosecutor in the case.

Committing Officer, Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 24th September 1852.

Remarks by the additional sessions judge.—On the 15th of January 1852, the prisoner, Judoonath Koomar *mookhtar*, was convicted and sentenced by the joint magistrate of Serampore, on a charge of fraud, which is a crime within his powers to dispose of; but the case was appealed, and the prisoner was released by order of the sessions judge, who remarked that if the case could be proved it should be committed to the sessions, as it was beyond the powers of the magistrate to punish the prisoner for the crime with which he was charged, but he did not state clearly what crime the prisoner should have been charged with, and the magistrate on this proceeding of the sessions judge committed the prisoner to the sessions on the former charge of fraud; but the offence appeared to me to be similar to that of Dimgunjure and others, tried on the 3rd January 1828, and reported at page 93 of volume 3 of Nizamut Adawlut Reports, since the prisoner was supposed to have caused a *razeenama* to be prepared and to be filed in the court of the joint magistrate of Serampore, in a case under Act IV. of 1840, by a man falsely personating Sheikh Aftoo; and accordingly I directed the charge to be altered. The prisoner

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having been tried for fraud by a court which was competent to dispose of the case, and having been released by the court to which he appealed, could not be tried again for the same offence, but he might be tried for another offence; and by the report of the Nizamut Adawlut, volume 2, page 50, in the case of Ramnewauz, &c., it was ruled that a man might be tried for a fraud, although he had been acquitted of forgery, but it may be doubted whether he may be tried for a forgery when he has been acquitted of fraud connected with the forgery; for although the crimes are distinct, yet forgery embraces fraud and cannot exist without it, and if the prisoner has not been engaged in fraud he cannot have been engaged in forgery. My opinion of the proceeding of the sessions judge was that he quashed the trial because the prisoner was not tried for forgery as he should have been, and so I proceeded with the trial after directing the alteration in the charge. The prisoner in this case was the *mookhtar* of the opponent of Aftoo Sheikh, and the case under Act IV. of 1840, had been sent to the sudder ameen of Serampore for investigation; whereas the *razeenama* was presented to the joint magistrate who was holding his court some few miles off at Konnagur, and before whom the case must have come for disposal. The evidence against the prisoner is, that if the man (witness No. 3) who wrote the *razeenama* under the direction of the prisoner, the witness (No. 1) who had been engaged by the real Aftoo, and who perceived that he was personated by another man, and the witnesses Nos. 1, 2, 3, 4, 6 and 7, who deposed either that the prisoner acknowledged his having got the *razeenama* to be filed, or to his having asked to be let off from being prosecuted just after the offence was committed and found out, and of the real Aftoo who denied having given the *razeenama* or authorized it. The joint magistrate left his tent and went to Serampore after receiving petitions, and the crime was not brought to his notice until the following day. In the case alluded to above, the prisoner was sentenced to four (4) years' imprisonment; and although this man has been in suspense about the case since December 1851, yet as he was a *mookhtar* of the court, I have not awarded him less punishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —Mr. Norris appeared for the prisoner, Baboo Ramapersaud Roy for Government.

It was contended by Mr. Norris first, that the present prosecution was barred by an order of acquittal passed by the sessions judge on the 14th February 1852. On this point, I hold the order in question cannot affect this case. The sessions judge quashed the order of the magistrate as having been given in a case beyond his competency. On that ground alone he directed the discharge of the prisoner. There is not a word in the *roobukaree*, as to the insufficiency of the evidence. The magistrate was quite justified therefore in committing the prisoner; and the charge was afterwards

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altered by the sessions judge, so as to include forgery, a charge of a much graver nature than that first brought against the prisoner.

Mr. Norris then proceeded to comment on the evidence, contending that it is insufficient for conviction. In this view I concur with him. There is no proof that the prisoner himself gave in the *razeenama*; that he caused it to be written and given in, rests on the evidence of Radhanath Chatterjea, Madhob Singh and Secundur Alee, but I cannot receive this evidence without distrust. Radhanath admits that he wrote the *razeenama*, and verified it as the deed of the real Aftoo. This admission places him in such a position, that to save himself, he must, if he can, throw the blame on some one else; but his statement that he did so at the bidding of the prisoner, becomes immediately open to suspicion, when he says that he wrote the *razeenama*, and verified it at the instance of a person whom he knew to be employed by the party opposed to Aftoo. Madhob Singh admits that he held a retaining fee from Aftoo, and that two men had come to him asking him to get a *razeenama* filed, which he declined to do, because Aftoo himself had not come in; yet he further admits, that he saw the false *razeenama* given in and heard it read before the magistrate without immediately bringing the fraud to the notice of that authority. Secundur Alee states that he saw Radhanath writing the *razeenama* at the dictation of the prisoner, the purport of which, his deposition in the Mofussil clearly shows that he understood, yet he too took no measures to stop this iniquitous proceeding at the time, or subsequently, when the *razeenama* was brought into court. In regard to the evidence of the *mookhtars*, who depose to the admissions of the prisoner outside the tent, after the magistrate had left it, is, to say the least, not very probable; that the prisoner would have been so ready to criminate himself, while no sufficient reason is given for the disappearance of the two persons who first asked Madhob Singh to have a *razeenama* filed in Aftoo's case, or for the escape of the person said to have personated Aftoo; who, it may be observed, appears to have been himself very negligent of his own interests, as he did not come forward for more than a week after he admits that he had received notice of all that had passed. Altogether so much suspicion attaches to the whole case, that I must give the prisoner the benefit of the doubts I entertain, and I accordingly acquit him.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT AND PARBUTTEECHURN SIRKAR

versus

SERAJDEEN MISTREE (No. 1), REZAOOLLAH SHEIKH (No. 2) AND DEANATOOLLAH SHEIKH (No. 3).

24-PERGHS.

1853.

January 29.

Case of SERAJDEEN MISTREE and others.

Burglary without aggravating circumstances; amount stolen being rupees 306. Sentence of ten years' imprisonment reduced on appeal to five years.

CRIME CHARGED.—1st count, Nos. 1 to 3, burglary in the godown of the Indigo factory of the prosecutor's master, on the 13th September 1852, in which property valued at Company's rupees 306 was stolen; and 2nd count, No. 2, having in his possession part of the stolen property, knowing it to have been stolen in the above burglary.

CRIME ESTABLISHED.—Accomplices in burglary and theft.

Committing Officer, Mr. E. Jackson, joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 20th November 1852.

Remarks by the sessions judge.—The prosecutor deposed that on the night of the 36th Bhadoon, about two and a half or three *puhurs*, he was awoke by witness No. 1, Dhoneram Pode, chowkeedar, who informed him that a burglary had been committed in the Indigo godown belonging to his master. The prosecutor immediately went to the spot and discovered the loss of Indigo cakes and brass and copper articles, valued about rupees 306; he directed the servants to search the premises, when at the very moment prisoner No. 1, Serajdeen Mistree, and No. 2, Rezaoollah Sheikh, were arrested close to the factory, the latter having a brass article in his possession belonging to the factory. All the prisoners denied the charges in this court. Prisoner No. 1, Serajdeen Mistree, admitted his complicity in the robbery both in the Mofussil and before the magistrate. Prisoner No. 3, Deenatoollah Sheikh, confessed in the Mofussil, but denied before the magistrate. Prisoner No. 2, Rezaoollah Sheikh, denied both in the Mofussil and before the magistrate. The fact of the burglary and theft of the property described, was fully confirmed, as well as the apprehension of prisoners Nos. 1 and 2, Serajdeen Mistree and Rezaoollah Sheikh, on the premises near the factory; the latter with some of the stolen property in his possession. All the prisoners pleaded an *alibi*, and cited witnesses to support the plea; but nothing was elicited in their favor. I concurred with the law officer, that the prisoners were all guilty of being accomplices in burglary and theft, and sentenced them to imprisonment.

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Case of SERAJDEEN MISTREE and others.

Sentence passed by the lower court.—Each ten (10) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner Rezaoollah appeals, asserting that the owner of the Indigo factory had caused his apprehension at his own house, from revenge at his taking service in another Indigo factory, and pleading that the witnesses cited by him had not been summoned. The plea is not founded in truth. The witnesses cited by him at the trial were examined.

This is a case of burglary without aggravating circumstances, but beyond the jurisdiction of the magistrate, in consequence of the amount of property stolen exceeding in value rupees 100. The sentence awarded is more severe than it is usual to pass in such a case. The period of imprisonment is reduced to five (5) years, both as regards the appealing prisoner, and those who have not appealed.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

BHHROOGNATH MISSER AND GOVERNMENT

versus

RAMKHELAWAN MISSER (No. 1), DOOKEE MISSER (No. 2) AND PURMA MISSER (No. 3).

SHAHABAD.

1853.

January 29.

Case of RAMKHELAWAN MISSER and others.

Appeal against a conviction of culpable homicide rejected, it being clearly established that death was the result of the violence used by the prisoners.

CRIME CHARGED.—1st count, culpable homicide of Purreag Misser, father of the prosecutor; 2nd count, severely beating Purreag Misser, from the effects of which he remained insensible in hospital and died on the 25th day after the occurrence.

CRIME ESTABLISHED.—Culpable homicide of Purreag Misser, father of the prosecutor.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 16th September 1852.

Remarks by the sessions judge.—The facts of the case are briefly these:—

On the 21st August, at mid-day, the deceased Purreag Misser, father of the prosecutor, was tilling his field. The defendants claiming the field as their own, ejected his ploughs, and on the deceased protesting against the violence, they assaulted him, striking him violently on the sides and stomach.

The deceased fell senseless to the ground.

He was then sent in to hospital.

Here he remained for ten days, when he was discharged as convalescent, but again admitted two days afterwards, and died in about a week subsequent to his re-admission.

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Case of RAMKHELAWAN MISSER and others.

The evidence of the civil surgeon shows, that on his first admission his speech was incoherent, and his memory much impaired, and that his condition indicated all the symptoms of effusion from the brain, and though there was no wound externally apparent, there was a puffiness on the scalp.

On dissection there was discovered a considerable quantity of fluid matter on the surface of the brain, which the civil surgeon states was the immediate cause of death.

The lesion causing the effusion might, in the doctor's opinion, have been caused either by a blow or a fall.

The facts of the assault and its results are clearly proved by four eye-witnesses. The prisoners plead "*not guilty*," but urge nothing in their defence that would exonerate them from the charge.

The *futwa* convicts them of the charge, and declares them liable to *deeyut*.

Sentence passed by the lower court.—Nos. 1, 2 and 3, each four (4) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The evidence of the villagers establishes the fact of the prisoners having beaten the deceased, and the evidence of the civil surgeon shows, that the injury, which caused death, must have been inflicted previous to the first admission of deceased into hospital. Whether the injury was the consequence of a blow or a fall, it was equally the result of the violence of the prisoners. The court see no reason to interfere. The appeal is rejected.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

MATWAL

versus

ANDHAROO (No. 1) AND BHURNAH (No. 2).

RUNGPORE.

1853.

January 31.

Case of ANDHAROO and another.

The prisoners' appeal was rejected; their defence (*alibi*) not being proved, and the evidence for the prosecution being satisfactory.

CRIME CHARGED.—1st count, culpable homicide of Ramnath, on the 16th February 1852, corresponding with 5th Phagoon 1258 B. S.; and 2nd count, wounding Pershad and Gadloo.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. A. G. Macdonald, magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 30th September 1852.

Remarks by the sessions judge.—These were prisoners who were implicated but had absconded at the time in a case tried on the 18th June last, contained in my statement of convictions, without reference for the month of June, in case No. 3. They were apprehended on the 24th May last. My remarks on the former case were these :

" From the statement of the prosecutor and the evidence adduced, it was proved that Uddoychurn Shah, jotedar, summarily sued Bahadoor Nussoo (prisoner No. 2) for rent in the collector's court; that on the morning of Monday, the 16th February 1852, Meheroollah, a peada of the collectorate, was sent to serve a *dustuck* upon prisoner No. 2, accompanied by Ramnath, Pershad Doss, Gadloo, and other servants of Uddoychurn Shah, to point out prisoner No. 2; when on arriving at the house of prisoner No. 2, they were attacked by the prisoners (and others not yet apprehended) and driven back, Pershad being badly wounded in the side from some sharp-pointed instrument, Gadloo receiving a slight wound, and Ramnath, the deceased, having been seized by all the prisoners and *taken inside of Bahadoor's premises*; when, during the same day, his body was casually discovered (by birds of prey feeding on it) by witnesses Nos. 12, 13 and 14, (living near the spot) in some grass, in a field near a river, at no great distance from the house of prisoner No. 2, when, through fear, no information having been given by them (these witnesses) until three days after, *viz.*, 19th February, when the police took their evidence, the bones and clothes, with a stick of the deceased only, were found in a *kullye* field, near to the spot where the body was first seen and recognized by the witnesses before referred to.

" In his defence, prisoner No. 2 denied the charge, alleging that, with a view to remove him from his jote, he had been maliciously implicated by one Hulodhur, the principal of Gadloo, (witness No. 2, for the prosecution) who had asked him for the re-payment of rupees

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500, though he had never borrowed any money from him, and that his house had been dacoited and plundered by Gadloo, Ashuk, Mogul and others (on the part of Uddoychurn) the night before the event, who had beaten and wounded him.

"Prisoner No. 3, (who is a nephew of prisoner No. 2, living with the latter,) made a similar defence as prisoner No. 2, alleging that the dacoits were of the party of Uddoychurn.

"Prisoner No. 4, (chowkeedar) denied the charge by stating that he had been at home since the Saturday preceding the event suffering from cholera, and had been unable to go any where; that he had heard of the dacoity occurring at the house of prisoner No. 2, the night before the event.

"The prisoners' witnesses fail to support them in their pleas.

"The *futwa*, on violent presumption, found all the prisoners "*guilty*" of the first count, punishable by *deeyut*, and prisoners Nos. 2 and 3, "*guilty*" of the second count, *viz.*, of having wounded Pershad and Gadloo, punishable by *hukumut adul;* in which finding I concurred."

In the present instance, on the statement of the prosecutor and the evidence adduced, it was proved that these prisoners had more or less been accomplices with the prisoners convicted in the other case, in culpable homicide, by having assaulted and forcibly taken into the house of one Bahadoor (who had resisted revenue process) from which they (prisoners) were not seen to come out again, Ramnath, deceased, who was found murdered near to Bahadoor's house the next day.

In their defence the prisoners resorted to *alibi*, which they could not prove.

The *futwa* found the prisoners "*guilty*" of complicity in the crime charged, punishable by *deeyut*. I concurred.

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, No. 1 with labor, without irons, (owing to old age and infirmity,) and No. 2, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—There are no grounds whatever for interfering with the sessions judge's sentence. The prisoners were well known to the eye-witnesses, who named them at a former trial, when other prisoners were sentenced and recognized the petitioners now before the court on their apprehension.

The *alibi* set up is in no way supported.

PRESENT :

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

MUHTOO BURKUNDAUZ.

RUNGPORE.

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A distinction in the term and to designate a party not held sufficient plea against conviction for perjury, when it appeared from the context that the party deposing knew that the same person was meant in both instances.

CRIME CHARGED.—Perjury, in having, on the 10th August 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the officiating magistrate of Rungpore, in a case of resistance of process, (Government *versus* Mukurund Deb Roykut,) that Bhote Thakoor was not taken away by any person on the part of Mukurund Deb Roykut, and that neither did he nor any other person remonstrate against it ; and in having on the same day, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said magistrate, that notwithstanding Ameer Chand Burkundauz and others remonstrated, Bhote Thakoor was taken away by persons on the part of Mukurund Deb Roykut ; such statements being contradictory of each other, on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. C. E. Lance, officiating magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 18th September 1852.

Remarks by the sessions judge.—From the statement of the prosecutor (on the part of Government) and the evidence adduced, it was proved that the prisoner, a police burkundauz, on the 10th August last, deposed, under a solemn declaration taken instead of an oath, before the officiating magistrate of Rungpore, in a case of resistance of process, Government *versus* Mukurund Deb Roykut, that Bhote Thakoor was *not* taken away by any persons on the part of Mukurund Deb Roykut, and that neither he (prisoner,) nor any other person remonstrated against it ; and in having on the same day, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said magistrate, that notwithstanding Ameer Chand, police burkundauz, and others remonstrated, Bhote Thakoor *was* taken away by persons on the part of Mukurund Deb Roykut ; such statements being contradictory of each other on a point material to the issue of the case.

In his defence the prisoner stated that when he went to give his deposition before the magistrate, having seen people under a tree smoking *gunjah*, he smoked a little of it himself, when, becoming stupified, he could not recollect what he stated. He had no evidence to offer.

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The *futwa* found the prisoner "*guilty*," and deemed him punishable by *akoobut*. I concurred, and as he was a police burkundauz, subjected him to the punishment awarded.

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—In the deposition of 10th August 1852, the prisoner said that Mukurund Deb Roykut's people did not take away Bhote Thakoor, and that no opposition or remonstrance was made; in the deposition on the same day, but subsequently taken, he said that the *rajah's* people did take him away, and that Ameer Chand and others remonstrated with them, but the name of Mukurund Deb is not used in the second deposition either in the questions or answers; and a doubt arises whether the *rajah* and *Mukurund Deb Roykut*, are one and the same person, and whether the prisoner knew that the same person was meant; as, however, the prisoner does not express any doubt on the subject, and as Mukurund Deb was called by the title of *rajah* as well as Roykut, I see no reason to suppose that the prisoner thought that different persons were alluded to: the questions ought, however, to have been put more distinctly and by name, not by title only. The contradictory statements on oath are clearly established, and I see no reason to interfere with the finding or sentence.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

KUMOLAKANTH PAUL.

24-PERGHS.

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The prisoner was convicted of perjury, the Nizamut Adawlut concurring with the sessions judge in dissent from the law officer.

CRIME CHARGED.—Perjury, in having, on the 28th September 1852, in the court of the magistrate of the 24-Pergunnahs, stated, upon solemn declaration, that Bissonath Patur, of the village of Govindpore, in the thanna of Kalee Ghat, had on the 26th Bhadoon 1259, gone to his house in the village of Chitlah, had employed him to write out a petition, charging Geereedhur Mundul and others with acts of oppression, and that he, Chunder Sekur Roy Chowdry, had, on the same date, accompanied the said Bissonath Patur to the magistrate's cutcherry where he was present, when he, Bissonath Patur, presented the said petition ; and having further, on the said 28th September 1852, distinctly identified the said Bissonath Patur, of Govindpore, as the person who came to him to get the aforesaid petition written and who had accompanied him as aforesaid to the magistrate's court ; such statement being wilfully and deliberately false on a point material to the issue of the case.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 11th January 1853.

Remarks by the sessions judge.—The magistrate has written the following abstract of the examination and grounds of commitment for trial :

"On the 26th Bhadoon last, a petition was presented in the magistrate's court in the name of Bissonath Patur, charging Geereedhur Mundul and others with various acts of oppression. The case was made over for investigation to the pundit, and on the 10th of September that officer ordered subpœnas to issue for the attendance of the prosecutor's witnesses. The subpœnas were delivered to one Thakoor Doss, peada, with orders to serve them, and he accordingly left the cutcherry on the 13th September for the purpose of proceeding to Bissonath's residence at Govindpore, a village about sixteen or eighteen miles down the Diamond Harbour road. He was then accompanied by Kumolakanth Paul (prisoner No. 2.) In the evening of the 14th, the nazir (who had been to the South to conduct an inquiry in another case) met the peada on the road about a *coss* from the village of Govindpore, but unfortunately did not observe by whom he was then accompanied. From that day to this, we have

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been unable to procure any certain tidings of this peada, although there seems reason to believe that he was bribed by one Gungahurree Ghose, who absconded at the time and has not since been apprehended, to keep out of the way, in order to bring Bissonath Patur (in whose name Gungahurree is suspected of having presented the petition) into trouble. The peada's prolonged absence attracted attention on the 26th September. Measures were immediately adopted to ascertain what had become of him. Bissonath Patur was apprehended and the depositions of prisoners Nos. 1 and 2, were taken. They distinctly swore to Bissonath Patur as the person who presented the petition and took away the peada; but on further inquiry not only was it conclusively proved that Bissonath Patur was on the dates they mentioned in his own village, but it appeared the prisoner No. 2, was a notorious enemy of Bissonath Patur, and had in the year 1851, in conjunction with Gungahurree, got up a false case of attempt to murder against him and others, for the perjury committed in which case he was made over to the sessions by Mr. Mackillop in calendar No. 9, of July 1851. He was therefore clearly the very last person whom Bissonath would have employed as his *mookhtar*, and no doubt remained that, not intimidated by the narrow escape he had made on the former occasion, he had again conspired with prisoner No. 1 and others, to effect the ruin of his adversary, and that for this purpose the two prisoners now present had deliberately perjured themselves. The case is as gross a one as it is possible to conceive, and the crime of perjury is in my opinion most conclusively established against the prisoners."

On the 27th of December 1851, the prisoner Kumolakanth Paul was tried for conspiracy, in prosecuting a false charge of violent assault committed by Bissonath Patur, &c., but he was acquitted, owing to its being a doubtful point whether the assault was committed. However, whether it was committed or not, it is certain that there is no good feeling between Bissonath and the prisoner Kumolakanth. They did both live in the same village of Govindpore, which is about seven or eight *coss* distant from Allipore; but Kumolakanth came about a year ago to live at Shahnagur near Kalee Ghat. On the 9th of September last, a man calling himself Bissonath Patur, presented a petition to the magistrate, complaining that he was assaulted, and a peada was sent to summon his witnesses. The peada was seen by the nazir (according to his report) about a *coss* from the house of Bissonath Patur in a *doonga*, and nothing since appears to have been heard of him.

Bissonath Patur denies having ever presented the petition, and several of his neighbours support his assertion; but the prisoners stated on oath before the magistrate, that he is the man who presented it, and also deposed as is stated in the charges. Now Chunder Seekur Roy (No. 1) was not previously acquainted with Bissonath

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Patur, and his statement is, that Bissonath was brought to him by Kumolakanth (No. 2), and he might have mistaken the man, particularly if the person who personated Bissonath were like him. I have therefore acquitted the prisoner No. 1, but Kumolakanth (No. 2) was well acquainted with Bissonath Patur, and he certainly could not have mistaken another person for him.

Considering the great improbability of Bissonath Patur's employing his former opponent, and the denial of Bissonath that he petitioned or had cause to do so, and that there is no evidence that he had cause to do so, and that he could not have left his village for the purpose without its being known to his neighbours, and that all his neighbours who were called denied his having done so, I believe that he did not present the petition.

The defence is, that Bissonath is the same person as the man who presented the petition, and Chunder Seekur Roy called three witnesses who said they recognized him at the court; but none of them were previously acquainted with him. Their names were not mentioned until long after the prisoner was accused; and there is no reason whatever for believing them. Kumolakanth could bring no witness to say anything in his favor. I have therefore convicted him, and I propose that he be sentenced to five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The protracted absence of a peada named Thakoor Doss, who had been sent to serve subpœnas on the witnesses in the case, Bissonath Patur, prosecutor, *versus* Geereedhur Mundul and others, prisoners, pending before the pundit, gave rise to the circumstances, out of which the charge against the prisoner arose. Thakoor Doss was deputed on the 13th September 1852, and had not returned on the 26th September, though the village to which he was sent was sixteen or eighteen miles distant.

Inquiry was set on foot in consequence of his absence; the prosecutor Bissonath was apprehended. The prisoner Kumolakanth Paul (and Chunder Seekur Roy, released,) swore on the 14th Assin 1259, 28th September 1852, that the Bissonath who had taken Thakoor Doss into the Mofussil, was the person who had presented the petition against Geereedhur on the 26th Bhadoon 1259, or 9th September 1852.

The prisoner adhered to his statement and cited witnesses to prove that fact in the sessions court; they, however, deny all knowledge of the circumstance.

Not only does the evidence for the prosecution show that Bissonath Patur was in his own village on the 9th September, but the enmity which the cases referred to in the magistrate's grounds of commitment (*see* extract copied in paragraph 2 of sessions judge's letter submitting the trial) prove to exist between the prisoner and Bissonath, renders it quite improbable that the latter should have

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employed the former as his *mookhtar* on any occasion. The sessions judge's 5th paragraph sets forth the grounds of the prisoner's conviction; the prisoner's defence fails altogether. The object seems to have been to implicate Bissonath in the disappearance of Thakoor Doss, who is not yet forthcoming and then to get him into trouble.

I confirm the conviction of the prisoner on charge of perjury, and sentence him to three (3) years' imprisonment, with irons and labor.

PRESENT:

J. DUNBAR, Esq., *Judge.*

KADIR BUKSH AND GOVERNMENT

versus

MAHOMED KHOSHAL MAJEE (No. 18), MOHUSSUN ALEE (No. 19), MOHABUT ALEE (No. 20) AND AHMUD ALEE (No. 21).

TIPPERAH. 1853. January 31. Case of MAHOMED KHOSHAL MAJEE and others.

Two prisoners convicted of administering some stupifying drug to the prosecutor and his companions and then robbing them; sentenced to imprisonment for fourteen years' with labor in irons, in banishment. A third prisoner in the same case, convicted of extortion and plunder, and sentenced to imprisonment for one year with labor commutable to a fine of rupees 100.

CRIME CHARGED.—Nos. 18 and 19, 1st count, administering a stupifying or intoxicating drug mixed in treacle, and desiring the prosecutor and his companions to partake of the same, declaring it to be *shirnee*, and whilst they were in a state of insensibility at night, robbing eleven persons of the sum of rupees 304-8-0; 2nd count, accomplices. in the above crime; 3rd count, extorting from the prosecutor and his companions more than the usual ferry rates; 4th count, accessaries to the plunder of six caps.

No. 20, 1st count, accessary to the above theft; 2nd count, plundering six caps, valued 4 annas 9 pie, from the prosecutor's companions; 3rd count, extorting from the prosecutor and his companions, more than the usual ferry rates; and 4th count, knowingly having in his possession the above plundered caps valued 4 annas and 9 pie; No. 21, 1st count, accessary after the fact; 2nd count, privy to the above theft; and 3rd count, knowingly having in his possession one of the above plundered caps, valued one anna.

Committing Officer, Mr. E. F. Radcliffe, joint magistrate of Noacolly, Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 14th December 1852.

Remarks by the sessions judge.—The particulars of this case, which is a very unusual one in this part of the country, is as follows:—

Kadir Buksh, who is joint prosecutor with Government, was returning from Akyab to pergunnah Baldakhal with ten companions, witnesses to the fact, Nos. 1 to 10. They had with them Company's rupees 316-8-0, the result of their savings, of which sum however Company's rupees 12 happened to be in a cloth containing parched rice. The balance, Company's rupees 304-8-0, was fastened in various amounts in purses round their waists beneath their clothing. Arriving

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at the ferry Boorboorca, of which the prisoners Mahomed Khoshal, (No. 18), Mohabut Alee, (No. 20) and Ahmud Alee (No. 21) are lessees, they crossed over, and offered five annas two pice, being at the rate of two pice per man for their passage. The prisoner Mohabut Alee (No. 20) refused to accept less than one anna per man.

The prisoner Mahomed Khoshal (No. 18) and two other persons, not named, were present at the time, to whom the travellers appealed in vain. Kadir Buksh then paid the eleven annas demanded, and the party taking up their bundles were on the point of resuming their journey; the prisoner Mohabut Alee (No. 20) however expressing a suspicion that they had opium concealed in their bundles, opened these, and took from that of Reazooddee (witness No. 1) one skull-cap, from that of Mahomed Shuffee (witness No. 3) two skull-caps, from that of Bhola Gazee (witness No. 4) one skull-cap, and from that of Azim (witness No. 2) two skull-caps, all being new. The prisoner Mohabut Alee (No. 20) then, and on the same pretence, searched the travellers' *cummerbunds*, and in doing so became aware of the money possessed by each.

The prisoner Mohabut Alee (No. 20) now demanded an anna for each bundle, and the travellers, yielding to this second imposition, paid him another sum of eleven annas. They were then allowed to proceed on their way, but had scarcely pursued it half an hour, when they were joined and saluted by the prisoners Mahomed Khoshal (No. 18) and Mohussun Alee (No. 19) and by another individual.

The new arrivals informed the travellers that they were proceeding to Comillah, and the prisoner Mahomed Khoshal (No. 18) assuming the appearance of a Ferazee, by letting fall the tucked up end of his body cloth (a practice common to Mussalmen generally while at their devotions only, but habitual to the new sect of Ferazees,) began to edify them by conversation on the subject of fasting and praying. The result was that they conceived a high respect for him as a religious and devout Mussulman. The three now passed on a-head, and thus reached the bazar of Gazeegunge, before the travellers, who on arriving later, saw them sitting in the shop of Rammanick Modie (witness No. 13); the prisoners called out to the prosecutor and his companions, advising them to stop at Gazeegunge, as if they proceeded further, night would certainly overtake them, and the witnesses Basir (No. 14) and Chooloo (No. 15) assured them that the bazar afforded all they could require. The travellers agreeing to remain took up their quarters in one room of the shop-keeper's house, the prisoners and their companions occupying another, and having purchased the articles they required, cooked and ate their evening meal.

In the course of the evening the prisoner Mahomed Khoshal (No. 18) stepped into their room and renewed the kind of conversation which had already placed him so high in their opinions. While thus occupied, the prisoner Mohussun Alee (No. 19) also entered with some soft molasses in his hand, and giving it to the prisoner Maho-

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med Khoshal (No. 18) desired him to ask the trvellers to partake of it. He did so, describing it as *shirnee,* which the successful result of his trade in mustard oil had induced him to offer. The witnesses Basir (No. 14) and Chooloo (No. 15) and some others happening to be standing outside, the travellers called to them to know whether they had partaken of the *shirnee.* Some one among them replied in the affirmative and each traveller then accepted from the prisoner Mahomed Khoshal (No. 18) about two tolahs weight of the molasses. Shortly after one of them complained that his liver was burning, while another who rose to assist him was seized with extreme giddiness. The remaining eight witnesses were all similarly attacked and the prisoner Mahomed Khoshal (No. 18) telling Kadir Buksh to put out the light and go to sleep, left the room. Kadir Buksh, feeling himself becoming powerless, called loudly for assistance, declaring that some noxious article had been given them, mixed with the molasses. No one came, and he too shortly became insensible.

Of what afterwards occurred the prosecutor and his companions were totally ignorant, but the former recovered sufficiently about 8 o'clock the next morning to look about him, without, however, the ability to raise his head. Becoming by degrees more sensible of his position, he discovered that he and his companions had been rifled of their money, their purses being either cut open or carried off with their contents. On inquiring, the shop-keeper informed them that the prisoners and their companions had departed during the night. The sufferers begged for water and parched rice, but according to their statements not only were they refused this trifling assistance, but were actually shut up in the room (which had been rendered less filthy by Sham Chowkeedar (witness No. 16) than it was discovered to be in the morning) during the entire day and the ensuing night, a step the shop-keeper explained in his evidence as being necessary to prevent them from injuring themselves. They appeared to have received every attention on the following day from the moonsiff and when a little restored to have lodged information of what had occurred at the thannah.

The prosecutor's ten companions formed the witnesses to the fact, the deposition of eight of whom I considered it sufficient to take.

Each described his individual loss in money, and the owners of the caps recognized each his own property. In all respects their evidence, which was very lengthy and full of detail, agreed with the prosecutor's statement, and presented no discrepancies in itself.

The shop-keeper and the two *dâk hurkaras,* witnesses Rammanick (No. 13), Basir (No. 14) and Chooloo (No. 15) whom I strongly suspect to have been accomplices in this serious outrage, corroborated the account I have given of the case, of course, however, deprecating all knowledge of, or share in, its worse features. The arrival of the two parties, the purchase of the *goor,* its distribution as *shirnee* to the travellers, and their condition on the following

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morning, were fully described. I cannot, however, but think that the fact of the witnesses Basir (No. 14) and Chooloo (No. 15) having taken a part in inducing the travellers to proceed that night no further, their ready reply or that one of them in the affirmative, when asked whether they had partaken of the *shirnee*, and their heartless treatment of the poor men on the following day, were sufficient grounds for considering and treating them as accomplices. If it were really necessary to the travellers' safety to lock them up for twenty-four hours, a thanna was not far off, and a moonsiff's cutcherry close at hand, and among so many, it would have been easy for one to have given notice to the police of what had occurred. In the shop-keeper's asserted ignorance of what took place that night on his premises, I place no confidence whatever.

The witness Sham Chowkeedar (No. 16) passed through the bazar on the evening of the occurrence, on his way as chowkeedar of a neighbouring village, and noticed the travellers cooking their supper. When returning home at day-break on the following morning, he heard of what had taken place, and going to the shop again, saw them, some within the room and some on the outside, but all perfectly insensible, and some naked. The state of the room was indescribably filthy. Coming back after bathing, he found Kadir Buksh partially recovered and learnt from him what had happened. The witness gave them some tamarind *sherbut* to drink, and appears to have been considerate and kind in his conduct. But his omission to give immediate notice to the police, especially being himself a subordinate member of it, was most remiss and culpable. Instead of doing so,—and Kadir Buksh had made him acquainted with all that had taken place,—he seems to have been a party to locking the sufferers up in the room in which they remained for twenty-four hours.

Mahomed Khoshal (prisoner No. 18) pleaded in defence that he had not gone to the Gazeegunge *hât*, at the ghaut of which he is one of the ijaradars. He inquired of the prosecutor and his companions what they had paid for their passage and was told by them in reply that each had given one pice. He passed the following night in his own house.

Mohussun Alee (prisoner No. 19) pleaded *alibi*, and that he had no connection with the ferry.

Mohabut Alee (prisoner No. 20) pleaded entire ignorance of the transaction, and claimed the five caps as being his own property.

Ahmud Alee (prisoner No. 21) pleaded, that on the 27th of July, the date of the occurrence, he was at the Chaguluya thannah. The cap found in his box had been given to his brother by the prisoner No. 20, to work in the flower pattern, and by him placed in the prisoner's box.

I may observe that Mohabut Alee (prisoner No. 20) energetically denied this statement.

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The evidence of the witnesses examined on the part of the prisoners Mahomed Khoshal (No. 18) and Mohussun Alee (No. 19) was not, in my opinion, such as to cast any doubt whatever on the truth of the statement of the witnesses for the prosecution. It was evidence such as is too readily obtained in this country, and in itself of the slightest description.

Mohabut Alee (prisoner No. 20) declined having any evidence taken on his behalf.

Ahmud Alee (prisoner No. 21) against whom the only material point proved by the prosecution, was the discovery of one cap in his box, has established what I consider to be a sufficient *alibi*. He appears certainly to have gone to the Chaguluya thanna, which is at some distance from the ghaut, on the 27th, and not to have returned until the 28th. The manner in which he accounts for the cap being found in his box is also not improbable.

The Mahomedan law officer pronounces the prisoner No. 18, Mahomed Khoshal Majee, "*guilty*" on the first count of the joint indictment against him and the prisoner No. 19, Mohussun Alee, whom he convicts on the 2nd count. He finds the prisoner No. 20, Mohabut Alee "*guilty*" on the 2nd and 3rd counts of the charge against him and acquits the prisoner No. 21, Ahmud Alee, on the ground of want of proof, in which I agree.

I concur with the Mahomedan law officer regarding Mahomed Khoshal Majee (prisoner No. 18) but am of opinion that Mohussun Alee (prisoner No. 19) was a principal instead of an accomplice in administering some stupifying and deleterious drug to the prosecutor and his companions, and in robbing them of their property. This difference of opinion is not very important, as an accomplice is liable to the same amount of punishment as his principal; nor is it such, if I considered my powers sufficient to pronounce a sentence in the case, as to necessitate a reference to the court. As regards the prisoner No. 20, Mohabut Alee, who is a bad character of great notoriety, I also differ, but in a more important degree, with the Mahomedan law officer, as I am of opinion that he was an accessary to the principal crimes.

He and the prisoner Mahomed Khoshal (No. 18) are both farmers of the ferry, and it was Mohabut Alee (prisoner No. 20) who, after exacting from the travellers more than he was entitled to demand for their passage across the river, and after robbing them of the caps he found in their bundles, ascertained, by searching their *cummerbunds*, that each had money in purses fastened round his waist, the usual mode of securing it from notice. During the half hour that elapsed before the travellers were joined by the prisoners Mahomed Khoshal (No. 18) and Mohussun Alee (No. 19) I have no doubt that the robbery and the manner in which it was to be effected had been arranged and decided on by the prisoners Mahomed Khoshal (No. 18,) Mohussun Alee (No. 19) and Mohabut Alee (No. 20), and that the last is, although not positively an agent in administering the stupifying

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drug and robbing the travellers, as criminal as the two first. What the drug was, whether that so frequently used, *dhatura*, or some other powerful narcotic, there are no means of ascertaining; but that the travellers were rendered insensible and helpless by some ingredient in the molasses purposely mixed with it for that purpose, and then robbed of the money on their persons by the prisoners Mahomed Khoshal (No. 18) and Mohussun Alee (No. 19) and that the prisoner No. 20, Mohabut Alee, was accessary to the act before it was effected, seems to me certain.

I can perceive no great difference in the degree of criminality of each prisoner, and would recommend that they should be imprisoned for fourteen (14) years with labor and irons, and in banishment, and further be fined, under Act XVI. of 1850, the sum of Company's rupees three hundred and four, eight annas (304-8-0) the amount stolen from the prosecutor and his companions, to be realized by distress and sale of their properties.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The evidence leaves no doubt of the guilt of the prisoners. I concur with the sessions judge in thinking the prisoners Nos. 18 and 19, Mahomed Khoshal and Mohussun Alee equally guilty, and convict them of administering some stupifying and deleterious drug to the prosecutor and his companions, and then robbing them. I sentence them as recommended by the sessions judge to be imprisoned for fourteen (14) years, with labor in irons, in banishment; and I further direct that a fine of rupees three hundred and four, eight annas (304-8-0) imposed under Act XVI. of 1850, be realized by distress and sale of their properties for the benefit of the prosecutor and his companions in proportion to their respective lossses.

It is not improbable that prisoner No. 20, Mohabut Alee, had a guilty knowledge of the evil designs of the other prisoners, but conviction as an accessary on so grave a charge, must rest on more than mere probability, and the evidence is insufficient to establish any connection between the parties as regards the administering of the drugs and the subsequent robbery. The travellers passed the ferry where Mohabut Alee extorted extra fees and took the caps from them in the day-time; the other prisoners carried out their nefarious purpose during the night at Ghazeegunge, distant at least three hours' journey from the ferry. The extortion of extra toll, the plunder of the caps, and the unauthorized search of the clothes and persons of the travellers, which, by exposing the money they had about them, no doubt excited the cupidity of the other prisoners, are clearly brought home to Mohabut Alee: convicting him accordingly of extortion and plunder, I sentence him to be imprisoned for one (1) year with labor; the labor commutable to a fine of rupees one hundred (100) to be paid within fifteen days.

PRESENT :

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT AND GUNGA CHURN ROY

versus

CHUNDERNATH GOOH (No. 1), KALEE DASS DUTT (No. 2), USGUR (No. 3, APPELLANT), SIRDAR KHAN (No. 4, APPELLANT), KOMUL GAZEE (No. 5) AND PEETUMBER DHOPY (No. 6).

BACKERGUNGE.

1853.

February 1.

Case of USGUR and SIRDAR KHAN (appellants) and others.

Embezzlement. Prisoners were employed to convey money to another place, but appropriated it. They were found guilty of theft. Held that under Act XIII. of 1850, the finding was legal, that law declaring that embezzlers shall be deemed guilty of feloniously stealing.

CRIME CHARGED.—1st count, theft of rupees 515, the property of Gunga Churn Roy, prosecutor; 2nd count, embezzling rupees 515, the property of the said prosecutor; 3rd count, being accomplices in the above crimes; and 4th count, privity to the above crimes.

CRIME ESTABLISHED.—Theft of rupees 515, the property of the prosecutor.

Committing Officer, Mr. F. B. Simson, assistant, with magisterial powers, Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 6th December 1852.

Remarks by the officiating sessions judge.—The prosecutor deposes that on the 10th Assin his head peada, named Nusseerodin, came to him at Burrisal, and told him that on the 8th idem, his naib, Chundernath Gooh, with his mohurir, Kalee Dass Dutt, Usgur and Sirdar Khan peadas, and Komul Gazee and Peetumber Dhopy Holdars, had started from prosecutor's cutcherry at Batojur, with more than rupees 500, which they were to bring to him in Burrisal. That when they arrived at Hatkola, they had been robbed by dacoits; that the naib had gone off to give intelligence at the thanna. On hearing this, deponent sent the peada into the Mofussil to make further inquiries, and gave himself a petition to the magistrate, who ordered the darogah to inquire into the case, when it appeared that no dacoity had taken place, but that the prisoners had got up a false charge of dacoity and had appropriated the prosecutor's money, on the pretence that dacoits had carried it off.

The prisoner No. 1, Chundernath Gooh, stated at the thanna that he left Batojur cutcherry on the night of the 8th Assin in a boat with rupees 515 of his master's, which was in his and the other prisoner's charge, to bring into his master at Burrisal, and stopped at Hatkola, when after about an hour a *dinghee* came up from the south, with about ten men in it, attacked his boat, beat his men, threw Usgur and Sirdar Khan into the water, and, entering the boat pushed him away from where the money was, and carried it off. That he recognized amongst the dacoits, Drap Suber Khan and others. On suspicion rising that the complaint was false, and his being again interrogated, he replied that he was not on board the boat at the time of

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the dacoity. When accused of having made away with his master's money he denied the charge, stating that he was sleeping on shore at Hatkola on the night in question, and had left the money in the charge of Usgur (No. 3) and Sirdar Khan (No. 4), who had made away with it. In the magistrate's court he denied the charge also, but said that Usgur had said that a number of men had attacked the boat and carried off the money and the box. Kalee Dass Dutt (prisoner No. 2) replies, that when they stopped at Hatkola the prisoner No. 1 placed the money under a *sutrunjee*, and leaving it in charge of Sirdar Khan and Usgur, went on shore to sleep; that suddenly waking up he felt somebody pushing the boat, which was half full of water; that Sirdar Khan was sitting on it, and Usgur in the water, and they told him that the box was taken, and the others having gone on shore, he and Peetumber moved the boat towards the north, when he saw five or six men in a *dinghee* going rapidly away, and people called out there goes the boat, when Usgur and Sirdar returning, told him that they had been attacked and robbed, but as these men were *latteeals*, he did not think the boat could have been robbed so easily, and suspected that they themselves were the thieves. In the magistrate's court he makes the same statement, accusing the two peadas of being the thieves. But it is difficult to understand how they can have made away with the money, save in collusion with him and the rest of the party. Prisoner No. 3, Usgur Peada, says at the thanna that the boat was attacked and robbed, as before stated, by seven or eight men armed with *lattees.* He makes the same defence in the foujdaree, and in my court he denies his guilt. The prisoner No. 4, Sirdar Khan, replies to the same effect as the last. The prisoner No. 5, Komul Gazee, replies that he suspected that Usgur and Sirdar Khan had made away with the money. That he was not in the boat at the time, but was told that a dacoity had taken place. Prisoner No. 6, Peetumber Dhopy, accuses Usgur and Sirdar Khan of having taken the money, as the last prisoner has done.

The first witness deposes to the prisoners starting with a certain amount of money which they were to bring to Burrisal on the 8th Assin. That on the next day the prisoner No. 1 returned, and said that his boat had been dacoited at Hatkola, and all the money, amounting to rupees 515, carried off. Both prisoners Nos. 1 and 2, told him that their boat had been robbed by dacoits. Witness No. 2 deposes as above. Witness No. 3, living at Hatkola, states, that on the 8th Assin he was sleeping in his shop, when about one *puhur* of the night remained he heard some one called out "*dhur dhur*," and going out saw nobody. Afterwards the prisoner No. 1 came from the house of a prostitute, named Kalee Tara, who was with him, and the woman asked him what noise he had heard. The prisoner said nothing, but after that, going to the banks of the *khal* called out "*hi, hi*," and returning and going towards the north, Kalee Tara told witness that rupees 515 of the prosecutor had been carried off. Witness No. 6 corroborates

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the above, and states that there were many other boats in the *khal* at the time. Witness No. 7, the chowkeedar of the *hât*, says that in the night in question Usgur Sirdar and Sirdar Khan called out "*nilo, nilo*" and running up he saw these two men near the house of Rampersaud Pall, and prisoner No. 1, and Kalee Tara coming up from the west. The three men then said their boat had been dacoited and rupees 515 taken. Went with them towards the mouth of the *khal*, but saw no boat or men going away. The darogah came the next day and no proof of any kind could be obtained, but it was clear that the case was a false one, and got up by the prisoners to enable them to appropriate the money of the prosecutor. The boat was in its usual state after the dacoity was said to have occurred ; nothing out of order in it, and the prisoners' clothes were all dry and as usual. There were 40 or 50 boats in the *khal* near the prisoners', and people in them, but none of them had heard anything of the dacoity. The prisoners Nos. 2, 5 and 6, all told witness that a dacoity had occurred, but they said nothing of any single thing having been taken away except the money.

It is clear, from the admission of the prisoners and the evidence of the witnesses, that the former were entrusted with rupees 515 to bring to their master at Burrisal. That on arriving at Hatkola, not one *ghurree* distant from where they had started, they *lâgowed* the boat, when the prisoner went to the house of a prostitute and remained there until about three in the morning, when, no doubt, as previously concerted between them, the two peadas cried out that they had been robbed, when prisoner coming up to them, and appearing to credit what they said, went the next day to the thanna and gave a deposition to that effect. Prisoner No. 2 certified also to several witnesses that a dacoity had taken place, though he afterwards, to save himself probably, said he was asleep at the time, and suspected that Usgur and Sirdar Khan had made away with the money. To be convinced of the falsehood of the story of the dacoity, it is sufficient to remember that there were 40 or 50 boats lying near that of the prisoners' in the *khal*, many people sleeping in them, but that no one of them heard anything of the matter, and the absurd tale told by the prisoners themselves.

I have therefore not the slightest doubt that the prisoners leagued together to rob their master of the money entrusted to them, and that they got up this charge of dacoity, that they might be enabled to do so with impunity. It appears to me that the prisoners having made completely away with a large sum of money entrusted to them, and having got up a false charge to enable them to escape punishment for so doing, are guilty of theft ; and I have accordingly found them guilty of that crime, and sentenced them as shown, in opposition to the opinion of the jury, who found them guilty of embezzlement only.

Sentence passed by the lower court.—Nos. 1 and 2, each five (5) years' imprisonment, with labor in irons, and Nos. 3 to 6, each four (4) years' imprisonment, with labor in irons.

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Case of USGUR and SIRDAR KHAN (appellants) and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoners were entrusted with money to convey to another place. They neglected to do so, and got up a false tale of having been robbed. The presumption is that they appropriated the money.

The money was lawfully in their possession, and therefore the offence is rather embezzlement than theft.

The distinction between a wrongful taking and a conversion consequent on a lawful possession, constitutes the line of separation between theft and embezzlement.

However, by Section V., Act XIII. of 1850, any person, who may embezzle money, &c., shall be deemed guilty of theft, and by Section IX., is liable to imprisonment for (7) seven years. There is no necessity therefore to interfere with the finding.

The prisoners Usgur and Sirdar Khan appeal, pleading that they are mere subordinates, and had no charge of the money. They were, however, active in trumping up the tale of the robbery, and the inference is inevitable that they were accomplices in the embezzlement. The appeal is rejected.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

SHEIKH AHMUD BUKSH ALIAS AHMUDEE.

HOOGHLY.

1853.

February 4.

Case of SHEIKH AHMUD BUKSH *alias* AHMUDEE.

Appeal rejected, there being no grounds for interference with the sentence passed upon the prisoner.

CRIME CHARGED.—Wilful murder of Budda Mussulman, prisoner's own son, on the 6th July 1852.

CRIME ESTABLISHED.—Culpable homicide of his son, Budda Mussulman.

Committing Officer, Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 21st September 1852.

Remarks by the additional sessions judge.—The prisoner Ahmud Buksh, is the father of the deceased man, Budda, who was about twenty-five years of age. On the 6th of July, Budda had a dispute with his mother or other female relations during his father's absence in the bazar; and when the father came home, he took a slight split bamboo in his hand and went out to beat his son, who, however, after receiving one blow, took the stick from his father and returned the blow. The father then took up a log of wood, a kind of mallet, which was lying close at hand, and hit his son on the shoulder and on the head, which caused him to fall senseless. The father and mother carried him home and did what they could for him, but he died the same day. It was reported at the thanna that the prisoner had struck his son, and the police went to the spot and apprehended

him at once; and there are six witnesses, who say that they saw the blows inflicted. The prisoner would have it believed that his son killed himself, and that he was called to see him; but he failed to prove it. The law officer finds the prisoner "*guilty*" of culpable homicide; and considering that there was no previous enmity, that the quarrel was sudden, and that the mallet was at hand, and that the prisoner afterwards did what he could for his son, I agree with him. I have, however, given a severe punishment, as the mallet weighed rupees fifty-three and was twenty inches long.

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Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The case is a very clear one; there are no grounds for interference. Appeal rejected.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

NUFFER CHUCKERBUTTEE

versus

MANICK BAOREE (No. 19) AND NEMAYE BAOREE (No. 21).

WEST BURDWAN.

1853.

February 4.

Case of MANICK BAOREE and another.

The prisoners' plea in appeal, being unsupported by evidence, their conviction was affirmed.

CRIME CHARGED.—1st count, Nos. 19 and 21, dacoity in the house of the prosecutor on the night of the 14th May 1852, and plundering therefrom property valued at rupees 22-12-0, attended with torture of prosecutor by burning his body with a lighted torch, and with having set fire to the prosecutor's house; and 2nd count, No. 21, knowingly receiving and having in his possession property acquired in the said dacoity.

CRIME ESTABLISHED.—Dacoity, with plunder and arson.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of West Burdwan, on the 15th October 1852.

Remarks by the additional sessions judge.—On the night of the 14th May, there was an assembly of persons at the house of one Puresh Chuckerbuttee, in the village of Nubogram. Nuffer Chuckerbuttee was one of them; but he went home before the party broke up, and soon afterwards his house was attacked by dacoits, who, he states, plundered it of property valued about rupees 22; one of his houses, too, was burnt, and his loss by the fire might have been any sum from rupees 5 to 16, according to different estimates. Six of the persons who were at the house of Puresh, as well as the two chowkeedars of the village, went to the scene of crime, and all eight of them state that they heard the prosecutor say that he had recog-

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Case of MANICK BAOREE and another.

nized the prisoners Nos. 19 and 20 (the latter acquitted), and every one of them says that he himself also recognized the same persons. The prisoner Sonatun (No. 20) is the son of Manick (No. 19) and Nemaye is his son-in-law. They all three live together, about two or three *beegahs* from the prosecutor, and the foujdaree gomashta and the two chowkeedars were witnesses to the circumstance of the prisoners Nos. 19 and 20 having been absent from their houses when they went to inquire for them after the dacoity; but when they were asked whether Nemaye was in the house, two of them said he was not, but the other said that he came out and talked, and that he saw him. No one besides the village police made any inquiry about these neighbours, who had been recognized among the dacoits. The darogah arrived at Nubogram on the 15th of May, but the men who had been said to have been recognized were not apprehended according to the record, until the 17th of May, although Nemaye was apprehended on vague suspicion on the 16th, and Manick and Sonatun had not absconded. Their names appear in the report which was sent from the thanna when the darogah first heard of the crime, but that report did not reach the magistrate until the 18th of May. Thus I see no reason whatever to believe that the prisoners were recognized, although it is very probable that the prosecutor did recognize one of them, and consequently accused both father and son. Manick Baoree having been apprehended on another day, made a confession before the police on the 17th of May, and before the joint magistrate on the 20th of May. I took the evidence of the joint magistrate, and he is on the habit of giving his sole attention to confessions, and consequently I convict on the confession made before him. Nemaye was apprehended on the 16th of May, and confessed before the darogah the same evening. He is said to have shown where he had hid a piece of ragged cloth, which is valued at one anna, in a field, which cloth is claimed by the prosecutor. On the 19th of May he again confessed before the joint magistrate, and on this confession I convict the prisoner.

Sentence passed by the lower court.—Each, fourteen (14) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The confessions in the Mofussil and before the joint magistrate, though substantially the same, vary considerably in the details, and bear throughout internal evidence of their being the true and genuine admissions of persons who took a part in the dacoity. In appeal, as on the trial, they allege enmity on the part of some of the villagers; but this allegation is unsupported by evidence. I see no reason to interfere.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

GOOROOPERSHAUD AEEN.

MYMENSING.

1853.

February 4.

Case of GOOROOPERSHAUD AEEN.

The prisoner was convicted of uttering a forged document, and sentenced to three years' imprisonment, and a fine of rupees one hundred in lieu of labor. On appeal to the Nizamut Adawlut, the conviction was upheld.

CRIME CHARGED.—1st count, forging the decisions of arbitrators, dated 2nd Phagoon 1252 B. S., purporting to be signed by Ramnarain Surma, Putronovis, and Juggernath Surma Biswas; and 2nd count, knowingly uttering the aforesaid forged paper in the moonsiff's court at Chowkee Mudargunge.

CRIME ESTABLISED.—Knowingly uttering a forged document.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 22nd December 1852.

Remarks by the officiating sessions judge.—A civil suit was instituted in the court of the moonsiff of Mudargunge by one Birjo Kishore Roy against Sumbhoonath Aeen, a cousin of the prisoner, for a share of a *talook.* After the defendant had filed an answer in the case he died, and the prisoner came forward and presented a petition, stating himself to be a twelve annas shareholder of the *talook,* and that only four annas belonged to his cousin; and in support of his claim, filed a private award of arbitrators, dated 2nd Phagoon 1252 B. S., signed by Ramnarain Surma, Putronovis, and Juggernath Biswas, who, the prisoner alleged, were appointed arbitrators on a dispute arising in the prisoner's family, to make a division of their shares. The prosecutor in the case, in order to refute this alleged award, filed a copy of a petition which had been given in by Rajnarain, Putronovis, son of the abovementioned Ramnarain, in a different case, dated 20th Cheyt 1250 B. S., or two years before the alleged award of the arbitrators was drawn out, in which it was stated that his father was dead. Upon this the moonsiff observing that the document was not genuine, made over the prisoner to the magistrate for trial. Witnesses Nos. 1 and 2, deposed to the fact of the prisoner having filed the document himself in court, and Nos. 4 and 5, that they knew Ramnarain, Putronovis, and his son, and Juggernath Biswas, the other alleged arbitrator, who are now all dead, and that the former died when they were very young, and his son a short time ago, and Juggernath Biswas, five or six years ago. The prisoner does not deny filing the document in the moonsiff's court, but states that he was unaware of its having been forged, as since the death of his parents he was generally absent from home, and that his cousin Sumbhoonath, the defendant in the civil suit, was the general manager of the affairs of the family. That on returning home he

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Case of GOOROOPERSHAUD AEEN.

found his cousin dangerously ill, and in fact he died the next day, when he (the prisoner) made out a list of his property, and found the above named document, when he and witness No. 7, his cousin's gomashta, read it, and there were others present. The prisoner in his defence named witnesses to prove that he was generally absent from home, and that he found this paper amongst his deceased cousin's property after his death; but their evidence was discrepant and not to be relied upon. The jury recorded a verdict of "*guilty*" against the prisoner on the second count, *viz.*, of uttering a forged document, knowing it to be such; in which finding I concurred. It has been clearly proved that Ramnarain, Putronovis, was not alive on the date on which he and Juggernath are alleged to have signed the arbitration award, *viz.*, 2nd Phagoon 1252 B. S.; and it is to be remarked that the prisoner makes no attempt to show that the arbitration did actually take place, but merely contents himself with denying all knowledge of the document being forged, and it is also equally clear that the prisoner filed this document in the moonsiff's court with fraudulent intent, in order to strengthen his claim in opposition to the prosecutor in the suit, and had not the latter fortunately refuted it by filing the petition of the son of the alleged arbitrator, dated two years before the alleged award, in which mention was made of his father's death, the prisoner would probably have succeeded in passing the document as a genuine one, and thereby have fraudulently acquired a larger share in the *talook* than he was entitled to.

Sentence passed by the lower court.—Three (3) years' imprisonment, without irons, and a fine of rupees one hundred (100) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—On referring to the answer in the case before the moonsiff, I find that Sumbhoonath himself set forth, that he was only the owner of four annas, and that twelve annas in the *talook* belonged to his cousin, the prisoner; he states that this was well known, but does not say a word about the award of arbitrators. I think it is reasonable to conclude that he would have done so, had he been in possession of such a paper. The statement of the prisoner therefore, that he found the document amongst the papers left by Sumbhoonath, is little worth. I see no reason to interfere, and reject the appeal.

PRESENT :

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT AND MUSST. DOOKHUNEE

versus

DUAHRAM SHAH (No. 1) AND KANDOORAH ALIAS KALEEPERSHAD (No. 2).

RUNGPORE.

1853.

February 5.

Case of DUAHRAM SHAH and another.

The evidence against the prisoner being open to much suspicion, he was released.

CRIME CHARGED.—1st count, No. 1, wilful murder of Chando, mother of the prosecutrix; 2nd count, accomplice in the said wilful murder; 3rd count, No. 2, accessary before and after the fact to the commission of the said wilful murder; and 4th count, Nos. 1 and 2, privity to the said wilful murder.

Committing Officer, Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 5th January 1853.

Remarks by the sessions judge.—The prosecutrix, wife of Akool, twenty years of age, inhabitant of Guzghuntah, states thus.—"I know not the date, but on Wednesday in Assin, at one *puhur* of the night, Kandoorah (prisoner No. 2), son of Duahram (prisoner No. 1) and Harooreah, servant of the said Duahram, came to my mother's (Chando) the deceased, and said 'come to our house, there is a piece of *gunny* there, bring it home.' They then took my mother with them. In the morning I went to Duahram's house and saw my mother was not there; I searched for her, but could not find her. I said to Harooreah 'you brought my mother yesterday, what has 'become of her?' Harooreah said, 'what Duahram has done with her 'I cannot say;' crying, I returned home. Afterwards Kandoorah came and said to me 'I know not whether the old *sala*, that is my 'father Duahram, or Harooreah, has murdered or not your mother, give 'me two men and the chowkeedar, and I will search the heap of 'ashes in Duahram's premises for her; I will protect you. Be not 'uneasy.' Having heard this, I began to cry, and remained at home. Kandoorah remained at my house. On Saturday, Bunij and others arrested Kandoorah, whom Darbesh rescued. Two days after this, I heard from Imambux that jackals had eaten the body of my mother. Hearing this, I went to the jungle, and saw that it was her body. The jackals had eaten the body from the breast to the feet, and from the breast to the head it was entire. On telling Bunij, Ameer and Fuqeer, they went and saw the body. The darogah, two days after, went and saw the head and a cloth near it, and showed them to me, which I recognized. She had been marked by small pox, and was dark. Kandoorah had held an illicit intercourse with my mother for two years. I complain against Duahram for the murder of my mother."

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Case of DUAHRAM SHAH and another.

Witness to the fact, No. 1 *Harooreah.*—I know the prosecutrix and know both the prisoners, whose servant I am. I knew the deceased, who had been the mother of the prosecutrix, and knew that an illicit intercourse had subsisted between the prisoner Kandoorah and the deceased Chando. About a year before the event, an illicit intercourse subsisted between these parties. One night in Bysakh, Chando having gone to Kandoorah's, Duahram laid hold of Chando, and having beaten her with his fist and elbow, wrested her bracelet from her arm and let her go. On Chando complaining at the zemindaree cutcherry, Duahram restored the bracelet and gave rupees 5 to her. In Assin last, Kandoorah took from Duahram rupees 14 and ten cloths, and a gold nose-ring, and a piece of gunny *(mecklee)* and on the 12th Assin, a Monday evening, fled to Chando's house. On that night at 12 o'clock, Chando and Kandoorah came to Duahram's house, and Kandoorah sent into the house, to bring from behind the western compartment some cloths belonging to him (Kandoorah). Duahram having seen Chando laid hold of her, and began to beat her with his fist, and after throwing her down put his foot on her throat. Hearing this beating, I came out from the northern house, and, greatly frightened, asked what is being done? Duahram said, be silent and go in and sleep. Hearing this, I stood at the door of the room, ten or twelve *haths* from the spot when the beating was going on. Chando died from the beating. Duahram took the corpse on his back and went towards the east; after two hours he returned, bathed and went to bed. I asked nothing, thinking he had thrown away the body into the jungle, at the east of the house, one and a half arrows' flight. On the next day, Tuesday, the prosecutrix crying was going along the road and saying Kandoorah brought my mother away last night, since when I have not seen her. Having seen this I said nothing to her, as Duahram had forbidden me. Two days after (Thursday) the village chowkeedar Fuqeer said to me "come". I went with him to the jungle, I saw that Hajee, Teprah and others were assembled looking at the corpse. I remained on the road. The chowkeedar did not let me see the corpse. Hajee chowkeedar reported at the thanna of Nisbetgunge, on Friday the Buxee went and held inquiry.

Witnesses Nos. 4 *and* 5.—These witnesses depose to having together seen, at about 12 o'clock on the night of the murder (Monday), as they were going along the road, the prisoner No. 2, *and witness No.* 1, in *company with the deceased,* proceeding to a south-westerly direction, and that on the following night they met prisoner No. 2 at the house of prosecutrix, who had told them that he had taken the deceased the night before to his house, when his father seized and began to beat her, on which he ran away; what happened after he could not say.

The witnesses to the sooruthal, Nos. 2, 3, 4, 5 *and* 6, depose to having seen, on Thursday, in a jungle, east of the prisoner's, jackals

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devouring the body of the deceased, which had been eaten from the breast to the extremities ; the head only remaining, which they identified as the deceased's. On the following day the police mohurir held an inquest, when only a part of a skull was found there.

Defence of Duahram, prisoner No. 1.—I did not murder Chundo ; who did, I cannot say. Harooreah is my field-servant. Being negligent of his business, he takes my son Kandoorah to Dookhunee's house, the prosecutrix, whence I abused him ; whence, through animosity, he has given false evidence ; but Durpnarain Shah, Fuqeer bearer, and Huree Churn, after seeing the corpse, asked Harooreah who had murdered the deceased,—he answered not. On the thanna Buxee also asking him, he said he did not know. The witnesses in the calendar will prove this. This is my answer. Afterwards prisoner said that the police sent for Muttroo *goinda*, who asked him for rupees 400 or 500, with a view to compromise the case with the police ; that he gave him no money. Afterwards the darogah made him and Kandoorah and Harooreah, prisoners ; making over Harooreah to Muttroo, who kept him in the *moodikhannah* all night, and brought him to the darogah the next morning, when he (Harooreah) implicated him (prisoner No. 1) as the murderer of Chando.

Five of twelve witnesses of prisoner No. 1, appear to support his defence.

Defence of Kandoorah, prisoner No. 2.—Denies the charges ; names numerous witnesses who will depose to his not having brought Chando away from her house on Monday night.

Nine witnesses of prisoner No. 2, failed in any way to support his statement.

The futwa of the law officer.—The *futwa* finds, on violent presumption, prisoner No. 1, "*guilty*" of culpable homicide, punishable by *deeyut*, and finds prisoner No. 2, "*not guilty.*"

Opinion and recommendation of the sessions judge.—I entirely dissent from this finding, and, not crediting the evidence of witness No. 1 against prisoner No. 1, and there being no sufficient evidence against prisoner No. 2, I would recommend both prisoners being acquitted.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—I agree with the sessions judge in considering the evidence in this case insufficient for the conviction of the prisoner Duahram. The evidence of Harooreah is not to be trusted. He denied all knowledge of the murder to the thanna mohurir, and it was not till five days after the police arrived at the scene of the murder that he revealed what he professes to have seen. Strong suspicion, no doubt, attaches to the prisoner ; but I could not ground a penal sentence on evidence so open to the suspicion of having been improperly obtained as alleged by the prisoner. I acquit the prisoner and direct his release.

PRESENT :

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT AND BEHAREE GEER

versus

BEEJADHUR (No. 1) AND HOOSEINEE (No. 2).

SARUN.

1853.

February 5.

Case of BEEJADHUR and another.

The prisoners were acquitted by the Nizamut Adawlut of highway-robbery, for the want of satisfactory proof.

CRIME CHARGED.—Highway robbery, attended with theft of property, valued at rupees 7-5-0.

Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 17th December 1852.

Remarks by the sessions judge.—I refer this case, because I entertain great doubts as to the guilt of the prisoner, Hooseinee ; and giving him the benefit of them, would release him, whereas the Moulvee convicts him with Beejadhur, of the highway-robbery charged against both.

The facts of the case are shortly as follows:—The prosecutor states, that on the day of the robbery he had gone to the bazar at mouza Pukairea to purchase ropes and cloth, taking rupees 5-8-0 with him, but not getting them, and having had an attack of fever, he was returning alone homewards, when about three *beegahs* from the village, two men came out of some bamboos and grass jungle and desired him to lay down any property he had about him ; and on his refusing to do this, one of them struck him over the head with a *lattee* and knocked him down senseless ; when two men who were following him a short distance behind came up, and assisted him, and between them managed to capture the man (Beejadhur) who had struck him, whilst his companion got clear off with all his property.

Dabeedyal and Bhurut, the two men who were following, corroborate this story, and say that when they came up (they were almost close at the time) they saw Beejadhur knock down the prosecutor, and managed to secure him, in consequence of his slipping, before he could make his escape. They further say that they heard him call to his companion Hooseinee, by name, and tell him to make off with the property, which also he gave him, and with which he escaped ; that they then took their prisoner with the prosecutor first of all to the house of the latter, and then to the thanna, from whence the darogah proceeded and eventually captured Hooseinee also.

Adilnarain, darogah of thanna Bettiah, deposes that the prisoner Beejadhur was brought to him by the prosecutor, who charged him with the robbery, but that he denied this, and said that he had been drinking with the prosecutor at a grog-shop, and that Hooseinee had been with him, and that he had then proceeded to look for Hooseinee, and on the second day took him at his own village. He says also

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that Beejadhur fell at the prosecutor's feet, and begged to be let off; and Seochurn, another witness, states, that on the night of the robbery he saw the prisoner and another man (apparently drunk) taking Beejadhur along the road, and that the prosecutor told him that Beejadhur had beaten him, and that they were taking him to the thanna, but that he then heard nothing of the theft.

Beejadhur, in his defence, tells a very confused story of being at a grog-shop, drinking, when the prosecutor and three other persons came there and Hooseinee also, and he says that a dispute arising, the prosecutor and his companions beat Hooseinee, and on his (Beejadhur's) interfering to stop it, they laid hold of him and carried him off, and got up the present charge against him, inducing the witness Bheemul to give evidence for them. At the thanna and to the magistrate he told pretty nearly the same story, excepting that he said that Hooseinee had beaten the prosecutor, but he can bring no evidence to show that the thing arose out of a drunken quarrel, and the evidence as to his having attacked and robbed the prosecutor, seems conclusive, especially as the above is clearly no valid or satisfactory reason for so serious a charge being made against him.

Hooseinee has, from the first, denied all knowledge of the robbery. On his trial he admits having seen Beejadhur in the bazar, but says he went straight home from thence, and he calls two witnesses to prove this, and they both state that they left the bazar and accompanied him home on this day. To the magistrate he said that Beejadhur had taken his *pugree*, but he has never said anything which can be considered as an admission of guilt, and as no part of the property has been found, the whole case against him must rest on the evidence attached to the statements of the two eye-witnesses. They both say that they heard Beejadhur call to him by name and tell him to make off with the plunder, though why he should have done this does not appear, as he could easily have taken it himself; and one of them (Bheemul) says he recognized him from being lame, although the darogah does not say he was lame when taken.

On the whole I am not satisfied that Hooseinee was really and truly identified when the robbery took place, and I suspect that he has been brought into the case rather from being a well-known associate and companion of Beejadhur, than from having been really recognized when the robbery took place; and giving him the advantage of the doubt, I would release him. However as the Moulvee convicts him as well as his companion, it becomes my duty to refer the case for the orders of the superior court; and I therefore forward the proceedings, recommending, in the event of their concurring with me, that Beejadhur be sentenced to imprisonment with labor and irons for five (5) years, and that Hooseinee be acquitted and released.

I have this day ordered the prisoner Hooseinee to be released on furnishing security in the amount of rupees one hundred (100 pending the result of this reference.

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Case of BEEJADHUR and another.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I find no satisfactory proof that a highway-robbery took place. The fact of the abstraction of the property is by no means established. I have no doubt that there was a drunken quarrel among the parties, and perhaps the prisoner may have received a blow, but nothing more is made out in a satisfactory manner. I acquit the prisoners Beejadhur and Hooseinee and direct their immediate release.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND SHEIKH TEZARUT

versus

DACCA.

JENOOLLAH (No. 2) AND SHEIKH KHEPO (No 3).

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Case of JENOOLLAH and another.

The conviction being good on the evidence, appeal of the prisoners rejected.

CRIME CHARGED.—Wilful murder of Sheikh Huzrut, brother of the prosecutor Sheikh Tezarut.

CRIME ESTABLISHED.—Accomplices in the culpable homicide of Sheikh Huzrut.

Committing Officer, Mr. F. B. Mactier, joint magistrate of Furreedpore, Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 26th August and 7th October, respectively.

Remarks by the sessions judge.—The prisoners are charged with the wilful murder of Sheikh Huzrut, the brother of the prosecutor. The circumstances of this case were detailed in the abstract statement of prisoners punished without reference for the month of February last, from which the following is an abstract.—"It appears that on the 20th of Bhadoon last, the deceased and prisoners quarrelled, in consequence of the former's cow having destroyed their crop, and that they assaulted and beat him. He complained immediately to the zemindar's naib, and the prisoners were fined. On the following morning, the prisoners and others, (not yet arrested), who, it is shown, were ill-disposed towards deceased, because he would not go over to another zemindar as they had done, in revenge for the complaint and fine which had been imposed on them, again assaulted him and beat him to death. Six eye-witnesses depose to having seen the prisoners, and two others, who were reported to have absconded, beat the deceased to death. The prosecutor with the chowkeedar of the village and others, took the body on the same day to the thanna, and he then and there charged the prisoners with having assaulted and killed his brother. The body, however, did not reach the sudder station in time to admit of a *post mortem*

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examination, and the evidence of the witnesses to the inquest is not clear as to the cause of death. The prisoners in their statements before the police admit having had a dispute on the 20th of Bhadoon with deceased, in consequence of his cow having destroyed their crop; to their having come to blows; to his having complained to the naib zemindar, and to their having been fined in consequence; but they deny the subsequent assault on the following morning, and urge that deceased quarrelled with his wife on the night of the 20th of Bhadoon, and hung himself. Their defence before this court is to the same purport, and they have called witnesses in support of it; but I consider it entitled to no credibility."

Three eye-witnesses, who were formerly examined, have again attended and repeat their previous statements. The witnesses to the inquest have also been examined. The prisoners deny the charge, and plead that deceased hung himself. They have called two witnesses to prove this plea; but they do not support it. The *futwa* of the law officer convicts the prisoners of being accomplices in the culpable homicide of Sheikh Huzrut; and in concurrence with that finding they have been sentenced to five (5) years' imprisonment each, with labor in irons. This trial came before the superior court, on the appeal of two other prisoners, Sheikh Habil and Sheikh Junglee, and the conviction and sentence upheld by the presiding judge (Mr. Jackson) on the 4th May* last.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—This appeal is preferred by two prisoners, Jenoollah punished in August, and Khepo in October 1852. Holding the evidence to be sufficient, the court will not interfere. Appeal rejected.

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* *Vide* page 725, of the Reports for May 1852.

PRESENT :

W. B. JACKSON, ESQ., *Judge.*

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

MUDHOOSOODUN DHANOOK.

BHAUGULPORE.

1853.

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Case of MUDOOSOODUN DHANOOK.

Murder of a child for its ornaments. An accomplice sentenced to death.

CRIME CHARGED.—Wilful murder of Gunesh Dutt, *alias* Lalljee, son of Sunker Misser, Muzhir.

Committing Officer, Mr. R. O. Heywood, officiating magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 28th December 1852.

Remarks by the sessions judge.—Prisoner pleads "*not guilty.*"

This case is one of peculiar atrocity. Deceased was a lad of nine or ten years of age, and an only son. The father, Sunker Misser, is a respectable well-to-do person, a manager of some large zemindarees, and resides at Moheeoodeen Chuck, commonly called Moondee Chuck, immediately in the neighbourhood of the civil station of Bhaugulpore. Prisoner had been a servant in the family during some six months, and at the time of the murder had been turned off about fifteen days for harsh treatment of the deceased. On the morning of the murder prisoner had come to Sunker Misser's house, and asked to be taken into service again, but Sunkur, paying him a rupee he owed him for wages, refused to take him back. On the afternoon of the same day, Sunker being absent at one of the cutcherries, he came again, and enticed deceased away, under pretence of making him a palanquin as a plaything, telling him to bring a knife with him for that purpose. Deceased fetched the knife, and followed prisoner to a spot near at hand, where, while intent probably on the making of his plaything, he was thrown down, his cap thrust into his mouth, and his throat deliberately cut with the knife he himself had brought. The body was then carried some further distance among the trees, twice, it seems, put down while search was made for some place to hide it, and finally flung into a well, being first stripped of silver and gold ornaments to the value of rupees 53; one small arm ornament, valued at one rupee, was left on the body, by accident seemingly, it being concealed by the sleeve of the dress. On the same evening prisoner, having cleaned the knife, brought it back and gave it to Mun Mohun Jah,* a lad of about fourteen, cousin of deceased, residing in the same house, who asking where the deceased Lalljee was: prisoner said he did not know and passed on. All this happened between the hours of 4 P. M. and 10 at night, at which time prisoner was apprehended on suspicion, excited by his having been the last person seen in company with deceased.

* Witness No. 14.

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The next morning early, marks of blood were discovered, which, on being followed up, led to finding the body in the well. Prisoner, who had before denied all knowledge of the matter, now confessed to having, in conjunction with one Runjeet Sonar, committed the crime as above described. He also pointed out the spot at the road-side, where his share of the spoil, two silver anklets, worth about rupees 8, was found hid in the dust.

Prisoner repeats this statement in the sessions court, confirming all he had said at the thanna and before the magistrate. He pleads that he was instigated to the crime by Runjeet, under the influence of drink and for the sake of the child's ornaments, and that he only held the boy's legs while Runjeet actually perpetrated the murder.

The law officer gives in a *futwa* of "*guilty*" of participation in wilful murder, and adjudges the prisoner liable to discretionary punishment by *akoobut*.

The case as regards the prisoner is of the clearest nature, and without one extenuating circumstance. His own confession of active participation in the hideous crime of cold-blooded child-murder for the sake of a few ornaments, subjects him to the exteme penalty of the law. I recommend that he, the prisoner Mudhoosoodun Dhanook, be sentenced to death.

There were three persons implicated in this crime, who have been conditionally acquitted by the magistrate—Runjeet, beforementioned, a working gold-smith, having a house in the bazar of Warisgunge, but pursuing his trade for some months in a veranda of Mudhoosoodun's house; Ramdyal, father of prisoner; and Musst. Pyreea, mother of the same; all residing in the same house and close neighbours of Sunker Misser: in fact all the localities alluded to in this report are within a stone's throw of each other, and of a public road leading directly from the cutcherries to a populous bazar. The spot where the murder took place is visible from this road, and within easy hearing distance of the wall of Sunker Misser's *zenana*. When I say that the spot is visible from the road, I mean that the *shureefa* and *khujoor* trees under which the boy was murdered, are distinctly visible, and that the thin screen of the *shureefa* tree and a little scanty low jungle only intervenes, divided from the public way by an open field not twenty yards across. On the far side of this spot is the bank of Khedan Lall's garden, some five feet high, and covered with prickly pear and brush wood. The *shureefa* and *khujoor* trees are about three feet from this bank: it was between them and the bank, and behind the thin screen alluded to, that the murder was committed.

The evidence against these three persons is mainly circumstantial; but as no improper motive appears to attach to any of the witnesses, and the facts are very strong and well supported, I cannot understand their acquittal and release by the magistrate, except under the impression that further evidence might turn up against them leading to more certain conviction.

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I have had the advantage of visiting the spot in person, which the magistrate being in the district, had not, and am decidedly of opinion that the murder, as it was perpetrated without noise or outcry of any kind, could not have been effected by one person unaided; the probability is that the least cry would have been heard by some one in the house, and as far as I can judge, from what I have seen and the evidence before me, I should say that Runjeet and Mudhoosoodun murdered the boy, while Ramdyal and Pyreea kept watch against surprise. The small *nullah* or ditch whence Joomun (witness No. 1) describes having seen the murder, is deep and partially filled with low jungle, which would have concealed all but his head from view. He might have been standing thus concealed within ten yards of the spot where the boy was murdered. The evidence of this witness is rejected by the magistrate, because not given till three days after the murder; no sinister motive however is imputed to the witness, while his reason for withholding his evidence is that which we know to be always uppermost in a native's mind, fear of being involved in difficulty as a witness, or perhaps suspected of being concerned in the crime itself. Madho Mallee (witness No. 16) was in the garden on the other side of the high bank I have mentioned, under which the boy was murdered. He saw thence the four persons and the boy all together near the spot where the murder was afterwards committed. His garden extends from thence to close upon the well where the body was found. The body must have been carried under this bank along two sides of the garden to arrive at the well.

Of rupees 54 worth of ornaments on deceased's body at the time he left his home, only rupees 9 worth has been accounted for.

Musst. Pyreea, when examined at the thanna, stated that a great intimacy existed between her son Mudhoosoodun and Runjeet Sonar. All these circumstances, with many others too lengthy to find place here, lead me to the opinion that the release of any of the prisoners was a hasty and ill-advised measure on the part of the magistrate; but not feeling myself authorized, under the rules in force (Act XXXI. of 1841, and Circular Order, No. 123, of the 16th December 1842,) to order their committal, I have abstained from interference further than by recording my opinion in this place for the consideration and orders of the court.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and R. H. Mytton.)—Mr. Jackson.—The prisoner Mudhoosoodun has confessed the murder of Lalljee, a boy of ten years of age, for the sake of his ornaments; the fact is established by other evidence; and the confession was repeated before the magistrate and in the sessions judge's court. I would convict the prisoner of the murder and sentence him to suffer death.

Mr. R. H. Mytton.—I concur with Mr. Jackson. The prisoner on the trial admits that he held the feet of deceased, while another person cut his throat. There are no circumstances to justify a mitigated sentence.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND ELAHEEBUX

versus

BEECAOOLAL (No. 3), DULLAN DOSS (No. 4), MUNNOO RAI (No. 5), LUNGHUT (No. 6) AND HURRUK (No. 7).

SARUN.

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Case of BEECAOOLAL and others.

The evidence being sufficient to show that the prisoners took part in an affray, an appeal against the sentence of the sessions judge, on the ground that it was not possible to state precisely all that took place during the affray, was rejected by the Nizamut Adawlut.

CRIME CHARGED.—1st count, Nos. 3 to 7, affray, attended with homicide of Khaleek Bux; and 2nd count, Nos. 5 to 7, aiding and abetting in the same.

CRIME ESTABLISHED.—Nos. 3 to 5, affray, attended with homicide of Khaleek Bux, and Nos. 6 and 7, having been present at an affray attended with the homicide of Khaleek Bux.

Committing Officer, Mr. R. J. Richardson, officiating joint magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 10th September 1852.

Remarks by the sessions judge.—This is a case of affray, attended with homicide, caused mainly, in my opinion, by the misconduct of the prosecutor and some other Mussulman inhabitants of the village (Issapoor) in which it took place, and the following is a brief statement of the facts as they came out on the trial. It appears that a cow belonging to the prisoner Munnoo Rai (No. 5) having been lost, inquiry was made about it, when it was ascertained that it had been killed by some of the butchers residing in the village, and, search being made, a part of the carcase was found in one of their houses, and it was admitted that it had been killed by order of the prosecutor or some of his family. Upon this a great multitude of people (Hindoos) proceeded to the prosecutor's house, where an affray took place, which ended in the death of one of the prosecutor's sons (who however was in a weak and sickly state before), in his being himself well beaten, and also in one of the opposite party (Munnoo, No. 5,) receiving a severe wound with a sword. It is exceedingly difficult to say what really took place during the affair, as the witnesses called by the two parties, speak or rather side so clearly with those in whose behalf they appear and against their opponents, that little reliance, I think, can be placed on their statements, and at any rate they must be received with much caution; but according to the evidence for the prosecution, it would seem that when the people got to the prosecutor's house they found him outside, and after beating him, tied and carried him off; after which some of them trying to get into the house were opposed by Khaleek Bux (deceased), one of his sons, who wounded Munnoo Rai (No. 5) after being

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struck by him with a *lattee*, when he (Khaleek) himself was knocked down by a brick, thrown (it is said) by Beecaoolal (No. 3) and was then pulled away by the rest, and was so severely handled by them (Beecaoolal is also said to have got on his breast and to have kicked and beat him) that he died there and then under their hands. On the other side again it is stated that but few people went to the prosecutor's house, and that they used no violence whatever, and that the prosecutor being then in deep grief for the loss of his son, Khaleek (who had just before died of spleen), and being enraged at their coming at that time, sent for his sword, and with it cut Munnoo Rai (No. 5) under the shoulder-blade, after he had been laid hold of by one of his (prosecutor's) people. In short, they all maintain that no violence was used by them, and that Khaleek, having died from a natural cause, his death has been taken advantage of to get up this case against them. The civil surgeon, however, states *most clearly* that his death *must have been caused* by a blow, or violence of some kind, which ruptured his spleen, already much diseased. After full consideration of all the facts of the case, I cannot but think that an affray took place, and that Khaleek was killed, and Munnoo Rai (No. 5) wounded in it; but with the contradictory statements made relative to the affair, I could not venture to say by whom the injuries were inflicted. All the prisoners plead "*not guilty;*" but there is, in my opinion, ample evidence to show that they were present at the affray, and that Beecaoolal and his father Dullan (No. 4) took a more active part in it than the others; but I consider also that *gross provocation* was given in the first instance by the prosecutor and his people, and I am rather surprised that greater mischief was not done; and although I believe all the prisoners guilty of the charge preferred against them, I think, with reference to the great provocation given, that a lenient punishment is all that is called for, and I have therefore (in opposition to the opinion of the two Hindoo assessors who sat with me on the trial, and who are for an acquittal,) sentenced them as noted in the preceding column, apportioning the punishment awarded according to my idea of the guilt of each individual.

Sentence passed by the lower court.—No. 3, one and half ($1\frac{1}{2}$) years' imprisonment, without irons, and a fine of rupees twenty-five (25) or labor; No. 4, one (1) year's imprisonment, without irons, and a fine of rupees twenty (20) or labor; No. 5, six (6) months' imprisonment, without irons, and a fine of rupees ten (10) or labor; and Nos. 6 and 7, each three (3) months' imprisonment, without irons and labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —Moonshee Ameer Alee appeared for the appellant, and Baboo Sumboonath Pundit for Government.

It was contended on behalf of the appellant that the statement of the prosecutor is not consistent throughout, that the sessions judge

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Case of BEECAOOLAL and others.

admits that it is difficult to say exactly what took place, and that the prisoner has established an *alibi*. I see no reason, however, to doubt the correctness of the conclusion as to the guilt of the prisoners, at which the sessions judge arrived on full consideration of all that could be gathered from the evidence. I concur with him, too, in thinking that the provocation justified a lenient sentence. Appeal rejected.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

LUCHMUN RAWANY BEARER (No. 1), SHEONARAIN ALIAS SOHUN BUHLIA (No. 2), JOGEE ALIAS JUKHOO BUHLIA (No. 3, APPELLANT), SHAMLALL AHEER (No. 4) AND SOOKLALL SYCE (No. 5).

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Case of JOGEE alias JUKHOO BUHLIA, (appellant) and others.

Burglary and theft of property, valued at rupees 3,438. Sentence of seven years' imprisonment, confirmed on appeal.

CRIME CHARGED.—1st count, Nos. 1 to 5, theft of property valued at rupees 3,438, belonging to Shahazada Kootuboodddeen; 2nd count, Nos. 1 to 4, accomplices in the said theft; 3rd count, No. 5, accessary to the above crime before its perpetration; 4th count, Nos. 1 to 4, receiving portions of the above property, knowing them to have been stolen.

CRIME ESTABLISHED.—Nos. 1 to 4, accomplices in theft, and No. 5, accessary to theft before its perpetration.

Committing Officer, Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 12th November 1852.

Remarks by the sessions judge.—The prosecutor was a servant in the employ of Kootuboodddeen Shahazada at Russapagla, and deposed to the fact of a robbery having been committed in his master's house one night in the month of Sawun last (the particular date not remembered), one of the doors having been forcibly opened, and two almirahs removed outside, from which property, consisting of cash, clothes, and silver articles, were abstracted, and a clock, the whole being valued at about rupees 3,438. It appeared that one Bolakee had been previously invited by prisoner No. 2, Sheonarain, to join in a thieving expedition. After this robbery had occurred, witness No. 20, Nunkoo Tewarry, Burkundauz, had mentioned to one Mattadeen as well as several other persons that a reward would be given to any person by whose means the perpetrators of the robbery should be discovered and apprehended. This Mattadeen fell in with Bolakee, who gave him some information which was communicated to Nunkoo Tewarry and led to the apprehension of prisoner No. 2, Sheonarain, and all the others. The prisoners denied the charges on which they

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Case of JOGEE *alias* JUKHOO BUHLIA, (appellant) and others.

were arraigned in this court. In the Mofussil and before the magistrate, prisoner No. 1, Luchmun Rawany Bearer, No. 2, Sheonarain *alias* Sohun Buhlia, No. 3, Jogee *alias* Jukhoo Buhlia, No. 4, and Shamlall Aheer, admitted their complicity. In the Mofussil prisoner No. 5, Sooklall Syce, admitted his being an accessary before the fact, but denied his guilt before the magistrate. Witnesses deposed to the discovery of a *chupkun* in the possession of prisoner No. 1, Luchmun Rawany Bearer, and also of prisoner No. 4, Shamlall Aheer, which were recognized as the property of the prosecutor's master. Sundry articles, consisting of rupees and clothes, were found in the possession of prisoners Nos. 2 and 3, Sheonarain and Jogee. It was proved also, as indeed admitted by prisoner No. 5, Sooklall Syce, in the Mofussil, that the prisoner No. 3, Jogee, had previous to the robbery some private conversation with prisoner No. 5, Sooklall Syce, both in the China Bazar and at the premises of his (prisoner No. 5's) master. Prisoner No. 1, Luchmun Rawany Bearer, No. 2, Sheonarain, and No. 3, Jogee, cited witnesses to prove an *alibi*. Prisoner No. 4, Shamlall Aheer, cited witnesses to prove that the *chupkun* No. 16, belonged to him. Prisoner No. 5, Sooklall Syce, cited witnesses to prove that he was sleeping with the other syces on the night of the theft, who would also depose to his good character. Nothing however was elicited in their favor. I concurred with the law officer in convicting prisoners Nos. 1 to 4 on the second count, and prisoner No. 5, Sooklall Syce, on the third count, and sentenced them to imprisonment.

Sentence passed by the lower court.—Each seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Mytton.)—The prisoner No. 3, Jogee, has now appealed. He distinctly confessed his guilt before the darogah and the magistrate, and is an old offender. There is no reason whatever to interfere with the sentence passed on him.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

SONEBURSE.

SARUN.

1853.

February 5.

Case of SONEBURSE.

The prisoner was acquitted of perjury, an interval of nine years having elapsed between his contradictory statements.

CRIME CHARGED.—Perjury, in having, on the 24th June 1843 intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. E. E. Woodcock, joint magistrate of Chumparun, that in a case of theft of opium, one of the thieves whom he saw carrying off the opium was Munogee, the son of Boodhun; and again in having, on the 26th of March 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before Mr. R. H. Russell, joint magistrate of Chumparun, that the Munogee, who stole the opium, was not the son of Boodhun but of Dureao, and that the Munogee, son of Dureao, had died five or six years ago, and that the Munogee present in court, whom he could not recognize, was the son of Boodhun, not the thief who stole his opium, the same being false and intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. T. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 30th December 1852.

Remarks by the sessions judge.—I refer this case under the provisions of Section IX., Clause 3, Regulation XVII. of 1817, as I consider it one calling for a lesser degree of punishment than I have power to inflict.

The facts are briefly as follows:—About the month of June 1843, some opium was stolen from a boat, and the prisoner, on the 24th of that month, came forward and gave evidence on oath before the magistrate of Chumparun, E. E. Woodcock, Esq., to the effect that he had seen the thieves taking it away, and amongst them had identified Munogee, Shio and Bhurut, the three sons of a man named Boodhun. He also went with the police to Boodhun's house in mouzah Mohooah, to search for the stolen property (of which a portion was found), when Boodhun himself was taken and punished, though none of his sons were at that time captured.

In March last, the abovenamed Munogee was apprehended, and the prisoner being then called on to identify him, declared upon a solemn declaration before the joint magistrate, on the 26th of that month, that he was not the man; that the man he had spoken of was Munogee, the son of a man named Dureao, who had died some five years before, and that the person present was Munogee, the son of Boodhun *alias* Boodram.

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Boodhun himself admitted when taken that his sons were named Munogee, Shio and Bhurut, and Munogee too said that his father's name was Boodram. He was moreover identified by other parties as the man who had been engaged in the theft, and was convicted and punished for it by the magistrate, and there is no doubt but that he was the person engaged, and spoken of by the prisoner in 1843.

In his defence the prisoner maintains that the Munogee now in jail is not the man who was engaged in the robbery, who was the son of Dureao, and has since died; and he calls five witnesses, who all state that Munogee the son of Dureao died in mouzah Mussooria, some five years ago; but it appears to me clear beyond all doubt, that the prisoner at first spoke of Munogee, the son of Boodhun, and the fact of his naming his father and two brothers at the same time, puts it, I think, beyond all doubt. Munogee too called the prisoner as a witness to his defence, and altogether I feel convinced, that he has knowingly denied all knowledge of him (though really guilty), in the hope of screening him from punishment.

The Moulvee convicts the prisoner of the perjury charged; and in this finding I entirely concur; but as he has already been a long time in jail (the case was in the first instance remanded for further inquiry), I consider some mitigation but fair on this account, and therefore refer the case, proposing, in the event of the superior court's concurring with me that he is guilty, that the prisoner be sentenced to two (2) years' imprisonment, with labor and irons, from the 15th instant, the date of the conclusion of his trial.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The prisoner first in 1843, stated that he saw Munogee, the son of Boodhun, carrying away the opium; afterwards in 1852, when Munogee, son of Boodhun, was put on trial on this charge, he said that that individual was not the person he meant, but Munogee, the son of Dureao, who had died in the *interim*, and when he was reminded that he said first Munogee, son of Boodhun, he explained that he then thought the individual, to whom he alluded, was the son of Boodhun, but afterwards discovered he was the son of Dureao. As, however, he named the three sons of Boodhun at the time, it would appear that he thought he knew them well then; still it seems hard to convict a man of perjury for contradiction, when nine years had passed between the two depositions, and his statement may be true. I therefore acquit the prisoner.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT AND BHOIRUB BAOREE

versus

THAKOORDASS BAOREE.

WEST BURDWAN.

1853.

February 5.

Case of THAKOORDASS BAOREE.

Prisoner convicted of murder, sentenced to imprisonment for life in the Allipore jail, in consequence of suspicion of his insanity.

CRIME CHARGED.—Wilful murder of Bhoirub Baoree's son, Ramchund Boaree, *chokra*, and wounding, with intent to murder, his grandson, Bukkernauth Baoree, *chokra*, by having, on the 15th day of September 1852, or 1st Assin 1259 B. S., inflicted upon them blows with a *kodalee* or hoe.

Committing Officer, Moulvee Gholam Ushruff, deputy magistrate of Bood Bood, West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 20th December 1852.

Remarks by the sessions judge.—The facts of the case are shortly as follows :—At about seven in the morning of the 15th September last, or 1st Assin 1259 B. S., the deceased Ramchand, a boy of 13, son of the prosecutor, who resides at Dumra, went to fish in a certain small tank, called Belatgurriah, about two *russees* distant from his father's house. With him was his sister Moonnee, a girl of nine, with the prosecutor's grandson, Bukkernauth, a boy about eighteen months old, in her arms.

Shortly afterwards Mongola Baoreenee (witness No. 1), who was eating her breakfast in her own hut, near the tank, heard cries of "*ma re! baba re!*" and looking over her wall, saw the deceased lying on the ground, and the prisoner, Thakoordass Baoree, striking him repeatedly on the head, with a *kodalee.* The witness, who had a child in her arms, ran out and begged the prisoner to desist, whereupon he advanced towards her in a threatening manner, and she fled towards the house of the prosecutor, to whom she called out that the prisoner was killing his son. Before she made her escape, she had seen the girl Moonnee drop the other boy, Bukkernauth, and make off. When the prosecutor and his wife arrived at the tank, they saw the prisoner strike Bukkernauth with the *kodalee* on the side of the head, near the ear, and fly towards the south, with the bloody instrument in his hand; upon this they made outcry, and witnesses Nubye Baoree, and Kartick Baoree (Nos. 2 and 3), who had accidentally reached the tank nearly at the same time with the prosecutor and his wife, pursued the prisoner. Heera Boaree (witness No. 7), who happened to be coming from the jungle on the south side of the village, heard the cries of Nubye and Kartick, and stopped the prisoner, who was thereafter apprehended by all three and brought back to the village, together with the bloody *kodalee*, which had been wrested from his grasp.

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In the mean time the deceased, who had been taken up insensible, breathed his last, in his father's arms, and Bukkernauth was taken home and attended to.

Nubye and Kartick (witnesses Nos. 2 and 3) saw both the children struck, but Nos. 4, 5 and 6, only the blow given to Bukkernauth, and the depositions of all correspond with those of the prosecutor and Nos. 1 and 7, in every other respect.

Witnesses Nos. 1 and 2, declared that they had asked the prisoner, when first apprehended, why he had struck the children, and that he replied, that he would have killed the prosecutor and his whole family if he could. Witness No. 7, on the contrary, affirmed that the prisoner had said nothing.

The prisoner freely confessed the crimes of murder, and wounding with intent to murder, to the darogah and deputy magistrate, and his confession, as well as the *sooruthal*, &c. were duly sworn to.

As the prisoner attributed the commission of the crimes to rage, excited by two attempts to poison him, made by the prosecutor, when they were at work together at and returning from the Jalsookah factory, in zillah Nuddea, witnesses from No. 18 to No. 26, as well as others, were especially examined on that point, but without any proof being elicited.

The civil assistant surgeon's deposition showed that the deceased Ramchund had received five wounds on the head and limbs, of which one, on the occiput, through which the probe used entered the brain, must have caused death. Bukkernauth was not sent in, in consequence of his tender age; but the native doctor of Bood Bood, witness No. 10, deposed that the wound on his head was severe, and might have caused death, as he was so young a child, if fever had supervened.

The prisoner pleaded "*not guilty*" before the sessions court, but when called upon for his defence, again confessed the crimes charged, and again assigned rage, excited by the attempts of prosecutor to poison him, as the cause of what he had done.

He gratuitously added that he had gone out with the intention of killing the prosecutor, but had taken the life of the boy Ramchund, in lieu of that of his father, and that he had not wounded Bukkernauth intentionally.

The girl Moonnee, who was examined by the deputy magistrate (but not sent as a witness to the sessions court, in consequence of her not understanding the intent of the solemn declaration,) stated, that Ramchund had asked the prisoner to lend him the *kodalee* for digging up worms; that he had abused him for refusing to do so; and that the prisoner had, thereupon, turned in sudden fury, and committed the crimes wherewith he stands charged.

The law officer's *futwa* declares the same fully proven, and the prisoner liable to death by *kissas;* with which opinion mine coincides.

I see considerable reason to believe that the prisoner's accusation against the prosecutor is well founded, for all the witnesses who had

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accompanied the prosecutor and prisoner to Nuddea, showed fear and uneasiness when closely examined in regard to the alleged poisoning, and some of their depositions were discrepant. The prosecutor himself mentioned the expedition in his deposition before the deputy magistrate without any necessity for so doing, and stated that he had seen the prisoner seated under a tree near a certain village, and called to him to come on without receiving any answer.

Beeroo (witness No. 20) acknowledged before the deputy magistrate that the prisoner had on his return from Nuddea, accused the prosecutor of poisoning him, though he pretended before the sessions court that no name had been mentioned. It is well known that such poisonings are quite common among the lower orders, when any pice, or clothes, or such small matters, are to be obtained thereby, and there can be no question that the suspicion entertained by the prisoner, was the cause of his slaying Ramchund and wounding Bukkernauth.

As, however, the fact of the prisoner's rage having been excited by such suspicion, cannot absolve him in the least degree from the guilt of premeditated murder, which has been fully proven, and which he has himself confessed, (his taking the son instead of the father making no difference in my mind,) I am compelled to recommend that he be hanged.

Resolution of the Nizamut Adawlut, No. 41, *dated the* 11*th January* 1853.—(Present: Mr. R. H. Mytton.)—The fact of the murder is admitted by the prisoner, Thakoordass Baoree, even in the sessions court. The provocation pleaded by the prisoner, to have been given to him by the father, would, if proved, be no palliation of his offence. Moreover, it is not proved, and the reasons given by the sessions judge for believing it probable that his story of having been poisoned is true, are not by any means convincing. On the contrary, the tale and the manner in which it is told, raise a suspicion that the prisoner may be suffering under aberration of intellect or hallucination. Before passing final orders in the case, it is desirable that inquiry should be made as to the prisoner's state of mind among the prisoner's neighbours and the guards in whose custody he has been since his apprehension. The sessions judge will cause such inquiry to be made and report the result.

The court observe that this trial occupied seven days, which is an extraordinary length of time for so simple a case.

Reply of the Sessions Judge, No. 28, *dated* 28*th January* 1853.—I have the honor to acknowledge the receipt of the Court's Resolution, No. 41, of the 11th instant, and in reply to forward copy of a report* from the officiating joint magistrate, Mr. W. J.

* *From the Officiating Joint Magistrate of West Burdwan to the Sessions Judge of West Burdwan, No.* 40, *dated the* 28*th January* 1853.

In reply to your letter, No. 27, dated 27th instant, I have the honor to forward the further evidence required by the Nizamut Adawlut, in the case of Thakoordass Baoree.

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Longmore, accompanied by the original depositions of the persons examined by him, touching the state of mind of Thakoordass Baoree.

The burkundauzes of the jail united in saying that the prisoner threw himself about, pulled off and put on his blanket in a hurried manner, sung, talked incoherently, &c., when he was first put into the jail, and that he now pretends he has been released, and is unjustly kept in custody. They do not think him mad, nevertheless; but that he is pretending to be so.

The other witnesses named, all affirmed that he has never been out of his mind, but enjoyed perfect sanity.

Mr. Longmore is himself of opinion that he is not insane. Nothing could be more collected than his bearing throughout the whole of the long and careful trial he had before me, during which I watched him closely.

On recurrence to the record of the trial the court will perceive that I put questions to almost all the witnesses, bearing upon the point of insanity; but without result. Many were asked why he wore his hair and beard long, and replied that he had vowed to do so in consequence of a disease with which he was afflicted. The prisoner himself confirmed this, but said that his illness had ceased of its own accord.

On consideration of all the evidence, I cannot but conclude that the prisoner is perfectly sane, and his conduct in the jail assumed and simulated.

In answer to the last paragraph of the court's letter, I beg to state that the unusual time taken up by the trial, was caused by the number of questions I had to put to the witnesses myself and the pressure of other business which I had to transact on a part of each of the days of trial.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The result of the inquiry corroborates the suspicion, which occurred to me on first taking up this case. The evidence is not correctly described in the sessions judge's letter of the 28th ultimo. The burkundauzes of the guard at Bood Bood, where the prisoner was apprehended, saw no symptom of insanity. Of those who had charge of him at Bancoorah, however, one (Hurlal) states that when the prisoner was first brought to the jail, he acted and spoke as insane, in such a manner indeed as to induce the imposition of handcuffs; that since then he pulls about his blanket, rolls in the dust, and sings, and that since his trial he states that the judge has acquitted him, and asks why they do not release him.

Golam Hossein's and Bukhya's evidence (with the exception of the imposition of handcuffs) is to the same effect, and the former

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I have several times spoken to the prisoner both before and after his conviction by you. He still adheres to the story of his having been poisoned. I do not believe him to be insane.

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adds that the prisoner now and then speaks a few words coherently and sometimes incoherently. Golam Hossein *alone* of these witnesses gives his opinion that the prisoner is not insane, but acting. The prisoner's neighbours never remarked any symptom of insanity.

If the prisoner were acting a part, it is before the magistrate and the judge especially, one would suppose, that he would do so; but the judge states that his bearing was quite collected during the trial, and the magistrate from his observation does not believe him to be insane.

A presumption therefore arises that the prisoner is not acting a part, and that his senses wander at times. Under these circumstances, although there is no *proof* that he committed the murder while labouring under insanity, and therefore he cannot be entirely acquitted, a sentence of death would be improper. The prisoner is sentenced to imprisonment for life, in the Allipore jail. This place of confinement is preferred to the eastern settlements, as being nearer to the insane hospital in case the symptoms of insanity should become more confirmed. The prisoner's behaviour in jail should have been noticed in reporting the trial originally. The local officers by neglecting to represent it, incurred a grave responsibility.

PRESENT:

J. DUNBAR, ESQ., *Judge*.

GOVERNMENT AND ELAHEE BUX

versus

JOOBA (No. 1), BISHESSUR (No. 2), GOVERDHUN (No. 3) AND MUNGNEE (No. 4).

SARUN.

1853.

February 8.

Case of JOOBA and others.

The court saw no reason for interference with the sentence of the sessions court.

CRIME CHARGED.—1st count, affray, attended with the homicide of Khaleek Bux; and 2nd count, aiding and abetting in the same.

CRIME ESTABLISHED.—Affray, attended with the homicide of Khaleek Bux.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 10th October 1852.

Remarks by the sessions judge.—This is a case of affray, attended with homicide, tried here on the 10th ultimo, and the following is a copy of the remarks then made in the case:—

" This is a case of affray, attended with homicide, caused mainly, in my opinion, by the misconduct of the prosecutor and some other Mussulman inhabitants of the village (Issapoor) in which it took

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place; and the following is a brief statement of the facts as they came out on the trial. It appears that a cow belonging to the prisoner No. 5, Munnoo Rai,* having been lost, inquiry was made about it, when it was ascertained that it had been killed by some of the butchers residing in the village, and, search being made, a part of the carcase was found in one of their houses, and it was admitted that it had been killed by order of the prosecutor or some of his family. Upon this a great multitude of people (Hindoos) proceeded to the prosecutor's house, where an affray took place, which ended in the death of one of the prosecutor's sons (who, however, was in a weak and sickly state before), in his being himself well beaten, and also in one of the opposite party (Munnoo, No. 5,) receiving a severe wound with a sword. It is exceedingly difficult to say what really took place during the affair, as the witnesses called by the two parties, speak or rather side so clearly with those in whose behalf they appear and against their opponents, that little reliance, I think, can be placed on their statements, and at any rate they must be received with much caution; but according to the evidence for the prosecution, it would seem that when the people got to the prosecutor's house they found him outside, and after beating him, tied and carried him off; after which some of them trying to get into the house were opposed by Khaleek Bux (deceased), one of his sons, who wounded Munnoo Rai (No. 5) after being struck by him with a *lattee*, when he (Khaleek) himself was knocked down by a brick thrown (it is said) by Beecaoolal (No. 3), and was then pulled away by the rest, and was so severely handled by them (Beecaoolal is also said to have got on his breast and to have kicked and beat him) that he died there and then under their hands. On the other side again it is stated that but few people went to the prosecutor's house, and that they used no violence whatever, and that the prosecutor being then in deep grief for the loss of his son Khaleek (who had just before died of spleen), and being enraged at their coming at that time, sent for his sword, and with it cut Munnoo Rai (No. 5) under the shoulder-blade, after he had been laid hold of by one of his (prosecutor's) people. In short, they all maintain that no violence was used by them, and that Khaleek, having died from a natural cause, his death has been taken advantage of to get up this case against them. The civil surgeon, however, states *most clearly* that his death *must have been caused* by a blow, or violence of some kind, which ruptured his spleen, already much diseased. After full consideration of all the facts of the case, I cannot but think that an affray took place, and that Khaleek was killed, and Munnoo Rai (No. 5) wounded in it, but with the contradictory statements made relative to the affair, I could not venture to say by whom the injuries were inflicted. All the

* *Vide* case of Beecaoolal and others, decided 5th February 1853, page 155.

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prisoners plead "*not guilty*," but there is, in my opinion, ample evidence to show that they were present at the affray, and that Beecaoolal and his father Dullan (No. 4) took a more active part in it than the others; but I consider also that *gross provocation* was given in the first instance by the prosecutor and his people, and I am rather surprised that greater mischief was not done; and although I believe all the prisoners guilty of the charge preferred against them, I think, with reference to the great provocation given, that a lenient punishment is all that is called for, and I have therefore (in opposition to the opinion of the two Hindoo assessors who sat with me on the trial, and who are for an acquittal,) sentenced them as noted, apportioning the punishment awarded according to my idea of the guilt of each individual."

These prisoners have all been apprehended since the case first came on for trial, and though they each and all deny their guilt, there is ample evidence I think to show that they were all actually present at it. The jury also appears to think that they were all present at it, but I do not consider their finding a very satisfactory one. Under all the facts of the case, however, and as I consider, for the reasons given in the September Statement, that a lenient punishment is all that is called for, I have sentenced them as noted.

Sentence passed by the lower court.—Nos. 1 to 4, each, six (6) months' imprisonment, without irons, and a fine of rupees ten (10) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The evidence on the record against the prisoners is sufficient, their appeal is accordingly rejected.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT.

versus

KALEE SINGH

MIDNAPORE.

1853.

February 10.

Case of KALEE SINGH.

Prisoner sentenced to imprisonment for life, being convicted of belonging to a gang of dacoits, and being a Budduck dacoit by profession, on his own confession, corroborated by direct circumstantial evidence.

CRIME CHARGED.—Being by profession a Budduck dacoit, and belonging to a gang of Budduck dacoits.

Committing Officer, Lieutenant C. H. Keighly, assistant general superintendent for the Suppression of Thuggee and Dacoity, Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 22nd January 1853.

Remarks by the sessions judge.—The prisoner confesses to the charge preferred against him. When first arrested in February 1851, he confessed to having been concerned in several dacoities which he related, including that at Mooragurrea, in which three persons were put on their trial and sentenced by this court in May [illegible].

In the month of August 1851, he made his escape from custody, and was not again arrested till November 1852. In that month the assistant superintendent for the suppression of dacoity tendered to him the pardon authorized in the letter from the Secretary to Government to Major Sleeman, No. 1889, dated 29th July 1839, on condition of his placing on record a faithful narrative of all the dacoities in which he had been employed. He then for the *first time* related all the particulars of two—one at Shambazar,* and another at Bishenpore.† He was then deputed with a guard to identify the houses in which he had committed the robberies. He pointed out in one instance the house of the witness Chedam Nundy (No. 19) at the village of Ryepat, about half or one *coss* distant from Shambazar, and the house of Ram Tonoo Daun (witness No. 23) about four *coss* north of Bishenpore. Both these parties depose to dacoities having been committed in their houses ; and their testimony is corroborated by documentary evidence, from which it appears that in the instance of Chedam Nundy several persons were put on trial and acquitted by the sessions court on the 12th June 1849. In that of Ram Tonoo, the prosecutor gave his evidence before the deputy magistrate of Gurbetta, on 14th February 1851, but there the inquiry terminated, the police having failed to obtain any clue to the perpetrators of the robbery.

There is some discrepancy between the confessions and the facts as they appear from the witnesses' depositions and the thanna and

* 25th December 1848.
† 10th January 1851.

1853. February 10. Case of KALEE SINGH.

other records; but they are such as may reasonably exist, when all the circumstances are considered, without detriment to the truth of the main points of the prisoner's narrative; for instance, Budduck dacoits having no fixed habitation, and coming from a distant point to commit a dacoity, might not know the name of the village or hamlet in which they commit a dacoity, though they might be familiar with the divison or thanna in which it is situated, and might designate the *waridat* accordingly. Again a discrepancy might exist in regard to the value of property stolen, as the parties robbed are frequently instigated by the police (in order to save themselves from responsibility) to represent their losses to be less than they really are, especially in cases where the latter have failed to gain any traces of the robbers.

The evidence of dacoit approvers as to the prisoner being a real dacoit is also wanting. The two approvers examined being only able to depose to having seen him on one occasion in the company of dacoits; but the gang to which the prisoner belongs has, according to his statement, been for years wandering about the neighbourhood of Ryepore, Purroleea and the Extra-Regulation Provinces bordering on this and the neighbouring districts; that the gang, though deriving its origin from the Budduck gangs pervading the Oude and Bundlecund Provinces, has, for some time, acted independently under its own sirdars, and committed depredations in the south and west of Bengal.

It is quite possible and probable that this statement is true and that the prisoner and Palchand and others convicted in this court on 1st May 1852 are the first of the gang who have been arrested. If so, it is obvious that witnesses to the prisoner's being a real dacoit are not obtainable, and that the rules quoted above, which require a few dacoits to be examined as to the reality of his being a dacoit, cannot be complied with; nevertheless, after an attentive consideration of the prisoner's confession and all the evidence adduced in its support, I can see no reason to doubt that the prisoner is what he represents himself to be, a Budduck dacoit by birth, education and pursuit, corroborated as his statement is by trustworthy evidence; and I accordingly recommend that he be sentenced to imprisonment for life, with a view to his being admitted as a dacoit approver.

Remarks by the Nizamut Adawlut—(Present: Mr. J. Dunbar.)—The depositions of the approvers, the confessions of the prisoners punished in the "Mooragurrea" case, and above all, the full and unreserved confession of the prisoner himself, corroborated as it is by the fact that certain dacoities did take place at the times, and in the localities named by him, leave no room to doubt that the prisoner is by profession a Budduck dacoit, and belonged to a gang of dacoits. The court accordingly sentence him, as recommended by the sessions judge, to imprisonment for life.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

IDOO KULAL.

BEHAR.

1853.

February 11.

Case of IDOO KULAL.

A boy aged 11 years, convicted of perjury, considered sufficiently punished by the confinement he had already undergone, *viz.*, for four months. His father and brother's lives being at stake in the case, in which he committed perjury.

CRIME CHARGED.—Perjury, in having, on the 25th November 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of Behar that, "I do not remember the date and month, but on Tuesday, at one *ghurree* in the morning (about 7 o'clock A. M.) Chumput Lal came to Dahoo Jolaha to demand four and a half pice on account of gambling due to him, on which Dahoo said he had no pice at the time, and solicited him to sit down and smoke tobacco, and that when he will get the pice he will send it to his home; that Chumput Lal did not smoke at Dahoo's place, but went away soon. I was sitting near Dahoo; Chumput Lal went towards the bazar, when Hosseinee, my brother, carried Chumput Lal into the house through a bye-path on the south side to play cards, when I also went into the house and near the hearth where stands the upstair apartment adjoining the room, I, from a distance of one *bays* (nearly nine feet), observed, that Bhinuck, my father, pressed the throat of Chumput Lal with two *duntas* (sticks) of the ladder, on each side, and Hosseinee, my brother, sat upon the chest of Chumput Lal; that Chumput Lal began to cry aloud in the veranda of the house and then died. Perceiving this I went away to play, and returning to my home at noon, I only saw blood near the hearth, and nothing more; that there were silver *kurahs* (bracelets) on both his (deceased's) hands and feet, gold *gokhloo* (an ornament) with chain on the ear, three *tarees* (an ornament), and *kurdhunee* (also an ornament) on the waist;" and on the 27th November 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said sessions judge of Behar, in his supplementary deposition, that "Musst. Mado, my sister-in-law, instructed me to state, that Bhinuck had pressed the throat of Chumput with sticks, and Hosseinee had pressed his feet, otherwise she will not give me anything to eat, and I accordingly gave the depositions." When questioned, how Chumput Lal was murdered?—answered, "how do I know?" Again questioned, "All that you already stated are they all false;" answered, after hearing his first deposition, "these are false;" such statements being contradictory to each other on a point material to the issue of the case.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 24th January 1853.

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Case of
IDOO KULAL.

Remarks by the sessions judge.—The prisoner came before this court as eye-witness No. 3 of calendar, in the trial of his father Bhinuck and brother Hosseinee Kulal for the murder of Chumput Lal, boy, whom they had inveigled inside their family dwelling-house, and there murdered him for the sake of his ornaments. This trial was reported to the court under my letter No. 289,* dated 20th December 1852.

The prisoner had already deposed in a clear and satisfactory manner as eye-witness of this cruel murder both before the police and magistrate. His depositions before the magistrate on 25th and 29th September last evinced ample intelligence. His personal appearance was equally satisfactory, and apparently upwards of twelve or thirteen years of age. He professed a full sense of the nature and obligation of an oath. Sworn before this court on 25th November last, he deposed as eye-witness of the foul deed, to the particulars thereof, as detailed in the indictment, but on 27th idem being recalled during the trial before this court, he then, as again therein detailed, deliberately persevered in deposing that all that he had previously sworn to on 25th idem was false, and made at the instigation of his sister-in-law, Musst. Mado, another eye-witness No. 2, which under all the circumstances of the case was in itself an improbability.

For such perjury he now stands arraigned in conformity to my directions. Before the magistrate he pleaded youth and ignorance of the meaning of perjury, at the same time cunningly declaring, when questioned by that functionary that both his depositions before this court were true. Before this court, however, he set up no defence, merely urging what excuse could he offer.

The *futwa* of the law officer would not question the fact of perjury had it been committed by a person of full age; but considering conviction barred according to the Mahomedan law as against a minor under eighteen years of age, declares the prisoner entitled to his acquittal.

A sufficient sense of the nature and obligation of an oath by a deponent, according to the practice in force, alone restricts the administration of an oath, independant altogether of the fanciful limits of majority and minority. I therefore necessarily dissent from the *futwa*, remarking that there is sufficient on the record as deposed to by the prisoner, and in his own conduct during this and the former trial, to vouch for his intelligence, as they equally do for singular wilful depravity in one so young. I had thus every assurance, both by the prisoner's previous conduct as well as by his appearance before this court in the first instance, that he was in every respect a competent witness (Circular Order, No. 1, February 1st 1828,) and consequently that I should not have been warranted in relinquishing his testimony altogether before this court, as I must have done, by declin-

* *See* case of Bhinuck Kulal and another, decided 21st January 1853, page 54 of the Reports for that month.

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ing to put him on his oath. The same conviction which led to his being sworn, necessarily convicts him of the perjury, which is marked with the same deliberation and intelligence as that with which he gave his original depositions. Doubtless, the ordeal of the trial for such a murder has been a severe one to every member of this wretched family, which together with his youth, urges me to plead in mitigation of the prisoner's punishment, another ground for the present reference, by recommending his being sentenced to one (1) year's imprisonment, apart from the debasing influence of the convicts of the jail, and to labor suited to his age, or to study under any one of the masters of the Government school at the magistrate's and head master's discretion.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner is undoubtedly guilty of perjury. His extreme youth however (eleven years) and the trying position in which he was placed, trying to one of more mature years, demand consideration. The life of his father and brother were at stake. One was sentenced to death, the other to imprisonment for life. The court is not competent to pass the sentence suggested by the sessions judge. Schools are not recognized as places of confinement, nor study as a legal punishment. Although the prisoner is considered legally convicted of perjury, the confinement he has already undergone for four months is deemed a sufficient punishment. He will therefore be released. The prosecution of this unfortunate child for perjury was not a wise measure.

PRESENT :

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT AND MUDDUN SHAHA

versus

LUCKHOO SHEIKH.

MOORSHEDABAD.

1853.

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Case of LUCKHOO SHEIKH.

On appeal the sentence was, under the circumstances, mitigated by the Nizamut Adawlut.

CRIME CHARGED.—Burglary in the shop of the prosecutor Muddun Shaha.

CRIME ESTABLISHED.—Burglarious entrance with intent to steal.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 13th December 1852.

Remarks by the sessions judge.—About two o'clock in the morning of the 4th Phagoon last, the prosecutor was sleeping in his shop when he heard a noise, and shortly after the prisoner entered in, having cut the *jhamp*, but before he could make away with any property or effect his escape, he was apprehended by Golamee and Nomaj, police chowkeedars, on the spot. The prosecutor identified the prisoner,

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Case of LUCKHOO SHEIKH.

The prisoner denied the charge; but from the evidence of the witnesses to his apprehension while he was attempting to escape, and his defence at the thanna, before the magistrate, and in this court, as well as from the fact of his being a professional thief, and of his having been several times previously convicted and punished, as appeared from the records of the magistrate's court, the charge was proved against the prisoner. The *futwa* of the law officer convicted him on violent presumption of a burglarious entrance with intent to steal; and I concurred in the finding, and sentenced him accordingly.

Sentence passed by the lower court.—Nine (9) years' imprisonment, with labor and irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I see no reason to interfere with the finding in this case; but the sentence of nine (9) years' imprisonment, with labor, is too heavy for a mere attempt at robbery by cutting a hole in the wall; nothing was taken, and even taking into consideration that the prisoner is an old offender, I think five (5) years' imprisonment with labor and irons, sufficient for the offence: sentence on Sheikh Luckhoo mitigated accordingly.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT AND LUKHEENARAIN MUJOOMDAR

versus

HURREENATH ALIAS HURREENARAIN BANOORJEA.

BEERBHOOM.

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Case of HURREENATH *alias* HURREENARAIN BANOORJEA.

It not being proved that the prisoner intended such a violent assault as was committed upon the prosecutor, the sentence passed on him was on appeal, reduced by the Nizamut Adawlut.

CRIME CHARGED.—Causing one Kangal Nukdee to commit an assault with wounding, with intent to murder, on Lukheenarain Mujoomdar, prosecutor.

CRIME ESTABLISHED.—Ordering a violent assault to be made on the prosecutor attended with severe wounding.

Committing Officer, Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 16th October 1852.

Remarks by the sessions judge.—This case occurred on the 31st Jeyt 1257, corresponding with the 12th June 1850; but in consequence of the prisoner having absconded and not having been apprehended until the 16th June last, it has only now been brought forward for trial.

It appears that the prosecutor was summoned to the village cutcherry, to subscribe somewhat as *mahtok* for the prisoner, who is the agent of the lakhirajdar; he refused in rather high and offensive language, when the prisoner directed Kangal, a peon, to make him stand up. In doing this the two struggled together, and in the

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scuffle that ensued Kangal seized a sword which happened to be close at hand, and struck him twice with great force, inflicting two very severe and dangerous wounds, one behind the shoulder and the other on the side of the head. It is in evidence that the prisoner told Kangal to cut the prosecutor down; but however this may be, the intent to murder, entered in the charge, is not borne out. The prisoner pleads "*not guilty*" and states that on the date of the occurrence he was in Calcutta. The *alibi* is not proved by the witnesses called by the prisoner, and is disproved, in a singularly satisfactory manner, by the witnesses for the prosecution, *viz.*, by the very bearers who carried him in a palanquin from the scene of the outrage immediately after the occurrence.

The *futwa* of the law officer convicts the prisoner of ordering a violent assault to be made on the prosecutor attended with severe wounding, and in concurrence therewith, I sentence him to four (4) years' imprisonment, and a fine of rupees two hundred (200), on or before the 15th November next, or, in default of payment, to labor until the fine be paid or the term of sentence expire.

The charge in the magistrate's calendar is not happily worded, the propriety of imputing an intent to murder to a party who merely orders an assault to be committed is doubtful: the intent is only inferrible from the act of the agent.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner has appealed. Mr. Waller has urged in his behalf that the evidence to the prisoner ordering the assault was discredited in regard to Paran Banoorjea, who was arraigned on a similar charge and acquitted, and is opposed to the probabilities of the case. The prisoner Paran was acquitted, because one witness only spoke to his instigating the assault. The evidence to the prisoner, who was the head man in the cutcherry, ordering Kangal, his peon, to pull the ears of the prosecutor and enforce payment of the *chanda*, is distinct, and is supported by the circumstances of the case; but in regard to the other expressions used by the prisoner, there is much discrepancy, and it is inconsistent with probability to suppose that on provocation of so trifling a nature, the prisoner should have told the peon to cut off the prosecutor's head. It is far more probable that in the scuffle that ensued the peon was exasperated, and drawing his sword inflicted the wound. Not believing, therefore, that the wounding was done with the assent or privity of the prisoner, or was within the scope of the design with which the assault was committed, I convict the prisoner of ordering the assault only and reduce the sentence to six (6) months' imprisonment, without labor, if redeemed by the payment of a fine of rupees two hundred (200).

PRESENT :
W. B. JACKSON, ESQ., *Judge.*

RAMCHUND KEOREE AND GOVERNMENT

versus

BISHONATH DASS (No. 5), BAOOL KAHAR (No. 6), HAGOO PAUL (No. 7), MADHUB KOLOO (No. 8), KOTA MOOCHEE (No. 9), KEAMUDDI SHEIKH (No. 10) AND GOPAL CHAMAR (No. 11).

JESSORE.

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Case of BISHONATH DASS and others.

Evidence of several eye-witnesses rejected, on the ground of the extreme improbability of their statements.

CRIME CHARGED.—1st count, Nos. 5 to 11, dacoity in the house of the prosecutor, Ramchund Keoree, on the night of the 9th September 1852, or 26th Bhadoon 1259, and plundering therefrom property valued at rupees 606-3-0; 2nd count, No. 5, privity to the above dacoity; and 3rd count, No. 6, having in his possession a portion of the above plundered property knowing it to have been obtained by robbery by open violence.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. S. Belli, officiating magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 9th October 1852.

Remarks by the sessions judge.—It is proved from the evidence for the prosecution, from the Mofussil confession of prisoner No. 5, and from the confessions before the police and the acting magistrate, of prisoners Nos. 6 and 7, that prosecutor at midnight of the 9th September was startled from his sleep by a blow on the head, and seeing dacoits, he jumped up from a chest on which he was reclining in his veranda, and ran towards the house of the chowkeedar (Bishonath), which was close by to the West and South, and called to him for aid, but received no reply. He saw ten or twelve dacoits, two of whom had torches, and three entered his veranda, and by means of a plough-iron broke open the chest to which their attention was directed by the aforesaid chowkeedar, who was outside to the North. Rupees 493, besides small silver coins, pice, gold and silver ornaments, cloth, &c., total value rupees 606-3-0, were taken out of the chest by the dacoits.

Information was given at the thanna on the 10th, and the darogah that evening arrived and took the deposition of the prosecutor, who recognized prisoners Nos. 5, 6 and 11, and suspected others, and who mentioned that his immediate neighbours, who are witnesses to the fact, had also recognized certain parties. Accordingly the evidence of these neighbours was taken the next day (11th), and they named the different persons whom they had espied in the act, or on the premises, by the light of the torches.

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others.

On the subsequent day Bishonath was apprehended and confessed (on 12th idem) in the Mofussil, but recanted before the officiating magistrate; and on the two following days Baool (No. 6) and Hagoo (No. 7) were successively apprehended, and confessed before the police, and were sent into the station, where they again confessed before the officiating magistrate. These confessions have been duly attested.

Prisoners Nos. 8 and 9 were caught on the 15th, and Nos. 10 and 11 on the 16th idem, but they denied the crime.

None of the accused confess in my court, but they do not show that there was any reason why they should be maliciously named; and I find no just cause for discrediting the positive testimony against them, supported as it is by the confession of some of the criminals above adverted to.

The only property found was a piece of cloth in possession of prisoner No. 6, but it is not capable of identification. The bulk of the plundered property was cash; so that recovery or identification was unlikely.

The witnesses for the defence disprove nothing.

Under these circumstances I sentence the chowkeedar (No. 5) who appears also to have been the instigator, to fourteen (14) years' imprisonment, and the remaining six prisoners each to seven (7) years' imprisonment, with labor, in irons.

I tried the case under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The deposition of the prosecutor is both contradictory, and most improbable; that of seven eye-witnesses, who besides the prosecutor, recognized each, three, four or more of the dacoits in the hurry and darkness of a night-robbery, not only does not convince me of the truth of the statement, but proves satisfactorily that the case is got up; the internal evidence of these depositions is sufficient ground for rejecting them; for the same reason I reject the thanna confessions, which no doubt have the same origin as the other evidence. The piece of cloth, which is said to have been produced by a prisoner and affirmed to be taken in the dacoity, is said by the sessions judge to be not recognizable; it is also improbable that the prosecutor should have so large a sum in cash lying in his box. If it were not for the confessions before the magistrate of the prisoners (No. 6) Baool, and (No. 7) Hagoo, I should be disposed to doubt whether any dacoity occurred at all; but as these two admitted that they were accomplices in the act, I see no reason to interfere as regards them: the rest I acquit.

PRESENT :

W. B. JACKSON, AND J. DUNBAR, ESQRS., *Judges.*

GOVERNMENT AND THAKOORMUN TEWARRY

versus

DHOOMUN (No. 1), PHOOLCHAND (No. 2), MOOLCHAND (No. 3), SHEOBUKSH (No. 4) AND DUSRUT (No 5).

SARUN.

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Case of DHOOMUN and others.

Conviction of murder. Sentence of death for principal offender, and of transportation for life against the others; seven years' imprisonment against an accessary after the fact.

CRIME CHARGED.—Wilful murder of the wife of the prosecutor.

CRIME ESTABLISHED.—No. 1 wilful murder; Nos. 2, 3, and 4, accomplices in the murder; and No. 5, accessary after the fact.

Committing Officer, Mr. F. A. Glover, joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 21st December 1852.

Remarks by the sessions judge.—The particulars of this case are shortly as follows :—On the 14th of July last, the prisoner Dhoomun appeared before the darogah of Bagah and deposed that he had seen the body of a woman having her throat cut lying in a field near the village of Gaighat, and the prisoner Sheobuksh (No. 4) keeping watch over it, and that the latter having informed his master Thakoormun (prosecutor) that he (Dhoomun) had seen it, he (Thakoormun) had sent for and told him that if he spoke of it to any one he would have him beaten and taken up about it. The darogah having, upon this, made such inquiries as he deemed necessary into the case, on the 17th of the month forwarded his proceedings to the magistrate, at the same time sending in Thakoormun and a man named Khodabuksh as prisoners, and as having been concerned in the murder, and the prisoners Dhoomun (No. 1), Phoolchand (No. 2), Moolchand (No. 3) and Sheobuksh (No. 4) as witnesses against them.

On the 21st July, Dhoomun stated to the magistrate that as he, Phoolchand (No. 2) and Moolchand (No. 3) were smoking together in the evening, they heard the cry of a woman, and proceeding to the spot, saw Thakoormun, Khodabuksh and Sheobuksh with the deceased, and that whilst Khodabuksh held her down, Thakoormun cut her throat with the knife then in the court; that going the following day to ease himself, he saw the prisoner Sheobuksh (No. 4) sitting there, when he told him that Thakoormun had killed his wife, and that he must not come there ; that by this time Thakoormun himself came up and hearing from Sheobuksh that he (Dhoomun) had been there, laid hold of him, and after striking him twice with a shoe, told him not to mention the thing to any one ; but that, being annoyed at his conduct, he had reported it to the police.

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Phoolchand (No. 2) and Moolchand (No. 3) both corroborated this story, and said that they had seen Thakoormun cut the woman's throat; and Sheobuksh said that on the Tuesday the deceased left her husband's (Thakoormun's) house in consequence of a dispute, and went to the prisoner Dhoomun's, but returned again and offered her husband some *pawn*, and on his refusing to take it from her, again went off to Dhomun's (No. 1), from whence Thakoormun with Khodabuksh took her into the fields, where the latter threw her down whilst the former cut her throat; after which they took off all her jewels, &c., and carried them home; that he was taken there by force, and made to look out that no one came to interrupt them.

Both Thakoormun and Khokabuksh denied all knowledge of the murder, and the former said that having gone away about some private business, he had only returned home on Wednesday morning, when he found that his wife was missing, and learnt from some of his neighbours that she had last been seen alive in the company of prisoners Dhoomun (No. 1), Phoolchand (No. 2), Moolchand (No. 3) and Sheobuksh (No. 4), and the wife of Dhoomun, and that they had been taking her with them to perform some *poojah*, which would ensure her *enceinte;* and since then had not been heard of; that he had then sought for Dhoomun, and not being able to find him, was about to have the matter reported to the police, when Dhoomun (No. 1), being beforehand with him, went and brought the darogah there, when he was himself taken up on suspicion of the murder. He added that he was himself the party injured, and that the darogah had offered, on payment of a large bribe, to give a true statement of the case, but not getting it, had sent him in as a prisoner.

The magistrate upon this directed all the parties before him to be separately confined, and having suspended (and subsequently dismissed) the darogah who had made the first inquiry, he deputed the darogah of Moteeharee to proceed to the spot, and ascertain the facts of the case; and he very shortly found out and reported that the whole thing had been misrepresented; that Thakoormun was innocent; and that the deceased, having been inveigled by the prisoners themselves, on the plea of performing a *poojah* which would enable her again to bear children, had murdered her for the sake of her ornaments; and he also sent in the cloth, and some of the silver ornaments she had worn when last seen alive, and also a knife and a kind of *kookree* (large Nepal knife) which had a cloth round the part where the wooden handle should have been, which was entirely saturated with blood, and which things had been found in the houses of, or at least had been traced to, the prisoners. The facts which have come out at the trial fully bear out this view of the case, and show beyond all doubt, in my opinion, that the prisoners are the parties who murdered the woman, and I conceive that the Moteeharee darogah deserves much credit for the manner in which he has conducted the inquiry and brought the matter to light.

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It appears that the deceased, who was forty years of age, although the mother of one girl, had for some years been childless; and being most anxious to have a son, and hearing that Dhoomun's wife had just then been found to be pregnant, had several times gone to their house to ascertain what she would do to have children; and it is shown from the evidence of Dhoomun's wife (Musst. Achrajeea), that on the night of the murder (Tuesday) she had come to their house (where some flowers of the Oral tree were already collected for the *poojah*) wearing her ornaments, &c., and from thence had gone with Dhoomun, Phoolchand, Moolchand and Sheobuksh into the fields, from whence she never came back. There is some reason to think that this witness went with the party, at last some of those who saw them say that she was there, though others deny this; but, be this as it may, there are certainly strong suspicions that she was aware of what was going on.

She goes on to say, that after some time, the four prisoners returned, bringing some silver ornaments with them, which they then and there divided, and she allowed that they told her that they had killed the woman; that her husband on the Wednesday, went to the thanna and reported that he had seen the body, and when they were going in to Moteeharee to give evidence, he with Phoolchand and Moolchand had given some of the ornaments to Dusrut to keep till they should return. She admits also that she saw the *kookree* in the house on the night of the murder, and that it is Phoolchand's, and that the ornaments belong to the deceased.

Musst. Jeechee, wife of Moolchand (No. 3), deposes, that on the Tuesday, Dhoomun (No. 1) came to their house, and called away her husband and his brother Phoolchand, and that about midnight they both came back, bringing some silver ornaments with them, which she put away; that they would not tell her at that time where they had been; that on the Wednesday Dhoomun (No. 1) went and brought in the police, when Thakoormun was apprehended; and that when they were going in to Moteeharee, Dhoomun, Phoolchand, and Moolchand gave some ornaments to Dusrut, telling him that they had been taken from the deceased, whom they had killed, which ornaments Dusrut subsequently gave up. She also speaks to the fact of part of the plunder being found in the house of her husband and brother, and admits that the *kookree* is the property of the latter, and that the cloth and ornaments belong to the murdered woman.

Musst. Asnussia (mother of Dhoomun) states, that on Wednesday evening having returned from mouza Rutwul, where she had gone, she heard from his wife (her daughter-in-law) that he, with Phoolchand, Moolchand, and Sheobuksh, had all taken the deceased from their house, into the fields, where they had killed her, and taken her ornaments; and that on that day (Wednesday) Dhoomun had gone and brought the darogah, when Thakoormun was apprehended, and sent in to the magistrate. She also says that part of the plunder was found

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in the houses of Phoolchand and Moolchand, and indentifies the *kookree* as being Poolchand's, and the ornaments and cloth the deceased's.

Musst. Sajee (the mother of Sheobuksh) states, that on the Tuesday evening, as she was returning with two other women from the fields, she saw the deceased in company with Dhoomun, Phoolchand, and Moolchand, and her son Sheobuksh, all going towards the South, and was told by Dhoomun that they were going to perform *poojah* in order to ensure her having children; she speaks also to the fact of the daughter of the deceased having come that very evening to look for her, and to her having gone with her to assist in the search, which, however, was fruitless. She says also that her son did not come at all that night, and she indentifies the ornaments in court as belonging to the deceased, and said that the prosecutor Thakoormun left his house on the Monday and did not come back till Wednesday, when he was apprehended.

Mohabeerpershaud, darogah of Moteeharee, states, that the magistrate, being dissatisfied with the manner in which the investigation had been conducted by the darogah of Bagha, deputed him to make further inquiry into it, upon which he proceeded to the place, and having in the first instance ascertained from Neemdhur Tewarry (a brother of the prosecutor) what things were missing, he, at his request, searched the houses of Phoolchand, Moolchand and Dusrut (who were all brothers) in mouza Gourhurree, and from Moolchand's wife got a silver ornament for the forehead, which she said had been placed there by Dhoomun's wife and mother; that she admitted that the prisoners Dhoomun, Phoolchand and Moolchand, with Sheobuksh were all implicated in the murder; that Dhoomun's wife also told him that her husband, with his cousins Phoolchand and Moolchand and Sheobuksh had first of all brought the deceased to their house, and had then taken her away into the fields, where they had killed her, and had afterwards shared her jewels, &c., and that when they had gone to Moteeharee they had made over some of them to Dusrut to keep. He describes the different places in which the things were found, and says that they at once were recognized as having belonged to the deceased, and that when he proceeded to the scene of the murder, he found there some parts of her broken bracelets, *(choorees,)* and some hair, &c.; that Dhoomun's wife also pointed out to him where the flowers had been placed in her house and where the deceased sat; and that he also observed there two places in which the earth seemed to have been dug up; that with Phoolchand nothing was found, and it was not until all the parties had been sent in that Dusrut came forward, and gave up some things which he had, and which, like the rest, were recognized as having belonged to the deceased.

Neemdhur Tewarry, the brother of the prosecutor, speaks to the same effect, and states that when his sister was lost, search was made

everywhere for her, and that when they had gone to Dhoomun's, to inquire about her, he told them that she had come back into the village. He speaks also of Dhoomun's going to bring the darogah of Bagah, of his brother's being apprehended, and sent in as the murderer, and of the admissions made* by both Dhoomun's and Moolchand's wives, of their husbands having been engaged in the murder, and of the different articles being found in their houses.

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Other witnesses also depose to the fact of their having seen Dhoomun, Phoolchand, Moolchand and Sheokuksh, with the deceased on the last night she was seen alive, and also to search having been made everywhere for her on the night she was missed, though in vain. They also state positively that Thakoormun had left home on the Monday, and did not return again until the Wednesday, when the Bagah darogah came and apprehended him. Other persons prove that the cloth and *kookree* (with a bloody cloth round the handle) and the ornaments were found and given up as stated above. All these points, with the evidence of the women, make, in my opinion, a very strong case against the prisoners; and it is, I am sorry to say, rather strengthened than otherwise by their own conduct and statements since they have been in jail.

On the 29th July, the prisoner Dhoomun stated to the magistrate, that on the Tuesday on which the woman was killed she had a dispute with another, one of the inmates of the house, in consequence of which the prosecutor expelled her, and she took refuge at his house, where he gave her a mat to sleep on; that in the night, the prosecutor, who had ascertained where she was, came there with Khodabuksh and the prisoner Sheobuksh and laid hold of her, and dragged her away, taking him (Dhoomun) also, and a *kodal* which was there, with him; that when they had got to a cane field near a *goolur* tree, prosecutor pushed her down, and told Khodabuksh to kill her, and on his refusing began to cut her throat with a knife, and did it a little, but not succeeding altogether in effecting it, desired him, (Dhoomun) to cut her *once*, upon which he took the *kodal* and gave her a cut on the left side of the neck, which killed her; that they then went home; the prosecutor engaging to give him rupees 100 if he would not tell of it; that the next morning he went for the money, when the prosecutor told him he had not the cash with him, but gave him some ornaments, which he tied up in the cloth and which he (Dhoomun) brought home and kept; that the prosecutor came afterwards to him and asked to have back the ornaments, saying he would give the cash he had promised, and then beat him; upon which he said he would go and bring them, and then, under pretence of going out to ease himself, went off to the police, and brought the darogah; that he did not from fear mention his own share in the transaction; that when the darogah began to inquire into the case, as he had no witnesses, the latter told him to bring forward some of his

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own caste to give evidence, upon which he produced Phoolchand and Moolchand, who at the instigation of the darogah himself gave the evidence required.

Phoolchand on this date said, that he knew nothing of the murder, but that he had seen Dhoomun going along on the Wednesday in a disturbed state, and that he had told him that Thakoormun's wife was missing and could not be found, and that when he came back (for he was then absent) he would seize him, as all the people suspected him of the murder, and that he was going to report it to the police; that he had been induced by the darogah to give the statement he had done; that Dhoomun's wife had brought some ornaments to him in a cloth, and that as he was going in to the station, the burkundauz had allowed him to go home, where he had heard from his brother's wife that Dhoomun's wife had said that Dhoomun had killed the woman, and that she and her mother had placed the things with them. Moolchand only said that he had been forced to give evidence in the case by the darogah and the others, and Sheobuksh denied all knowledge of the murder, and said that he too had been forced to give evidence about it.

The above, it will be observed, is the second statement made by Dhoomun regarding the murder. On his trial here he states, that the deceased having left her own house in consequence of disputes with another woman, had come, or rather had been brought, to his wife by Dhoop's wife, and was sleeping on a mat, when, at six *ghurries* of the night, the prosecutor came there with Khodabuksh and Sheobuksh (No. 4,) and took her away towards the fallow land and near the cane field and a *goolur tree*, under which he (Dhoomun) stood, and saw the prosecutor make her sit down, and then tell Khodabuksh to kill her; that Khodabuksh refused to do it, but at last laid hold of her, when he (Dhoomun) knowing that they were about to kill her, had run off to get help, and having taken with him four persons, Keamoodeen, Nankoo Das, Phekoo and Neemdhur (the three last-named have, however, all given evidence quite the reverse of this,) was returning with them, when they met the prosecutor, who told them he had taken her to Hurbuns Pandy's house; that when prosecutor had come to his own door, he told him that he had killed her, and that he would give him rupees 50 if he would say nothing about it, and that others of the villagers also begged him not to mention it; that the prosecutor had then given him some ornaments independent of the above rupees 50, when he took them and went home. The day after the prosecutor came and asked him to give back the ornaments, saying, he would give him the cash, and on his remonstrating with him about it, had taken him away and beat him twice with shoes, upon which he had gone off crying to his cousins Phoolchand and Moolchand, and told them that prosecutor, having taken the deceased from his house had killed her, and having given him some ornaments was then disputing about them; that he then sent

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Phookchand to call his mother to take care of his house, and had then gone off and reported the thing, and brought in the police; that the prosecutor had offered the darogah rupees 500 to hush the case, but that he would not suffer this to be done; and that the people side with him.

Phoolchand denies all knowledge of the murder, and says, that the prosecutor and Dhoomun alone know what was done to the woman; that on the Tuesday evening he was at home and went nowhere, and that on Tuesday he had seen Dhoomun going along in a disturbed state, when he told him that the deceased had come to his house in consequence of a dispute, and that the prosecutor and two others had taken her from thence and killed her, and lest he should be implicated in the offence, he was going to report it to the police.

He says also that when the darogah first came, he refused to give evidence, but was afterwards induced by them to do so, and he claims the ornaments found in his house as his own.

Moolchand also denies all knowledge of the murder, and says that he was at home on Tuesday evening; that when the police came he refused to give evidence, but was beaten and made to do it; and he also states that the ornaments found in his house belong to himself.

Sheobuksh states, that the deceased having left her own house, owing to a dispute, went off to the village and eventually to Dhoomun's house, from whence the prosecutor Khodabuksh and himself took her (on the plea of taking her to another village) into the fields, where the former cut her throat, whilst Khodabuksh held her down; that he was himself standing by all the time, and the next day was watching the body when Dhoomun came and saw it, and in the end went and reported the thing and brought the police, when he (deponent) gave evidence about it.

Dusrut says, that Dhoomun's wife gave him the ornaments to keep, telling him that they were her own; then he says that she told him that they were the prosecutor's; that having gone away to bring home his wife, when he returned he heard that his house had been searched, upon which he went and gave up the things which he had buried just as they were given him.

Two witnesses called by Dhoomun to his defence, both say that they never saw the prosecutor give him anything, whilst the third (Musst. Nunkea) states, that she also saw the four prisoners going along with the deceased, and that her daughter came to look for her on the night she was missing; and three others called by Phoolchand and Moolchand, all depose that they know nothing of the case.

There is ample evidence in this case to show that the deceased, with whose murder the prisoners stand charged was most cruelly and brutally murdered, and the sole question is, whether it is done by them or by the prosecutor himself, aided by Dhoomun, Sheobuksh (for both these men have admitted having been present at it) and others. After the fullest consideration of all that has come to light

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on the trial, I cannot but express my strong belief that the prosecutor had nothing whatever to do with it; and that the prisoner Dhoomun (No. 1), Phoolchand (No. 2), Moolchand (No. 3) and Sheobuksh (No. 4), are the guilty parties. In the first place, I see no satisfactory or adequate cause for the prosecutor's having killed his wife; for even supposing that the dispute spoken of (though there is no proof of it) had really occurred, this does not appear to me a sufficient reason for his having murdered her; and, independent of this, there is most satisfactory evidence to show (and the fact is in a manner corroborated by the prisoner Phoolchand's deposition before the magistrate on the 29th July) that he was absent at the time. On the other hand, there was the strongest circumstantial evidence that the prisoners are the guilty parties, and the sole fact which makes against it is Dhoomun's having been the first to bring the matter to light; but it may very well be (and I believe it to have been the case,) that he did it solely and only to screen himself from suspicions which he knew must soon arise against him. It has, I think, been clearly established that the deceased, being anxious to have more children, and hearing that Dhoomun's wife was then in the family-way (I may remark here that the trial was postponed for a few days in consequence of her having just been confined, and this would show that at the time of the murder her pregnancy must have been well-known and notorious,) was in the habit of going to their house to ascertain how she could accomplish her wish (Dhoomun too is reported to have been an *ojah*, and to have had the power of effecting this), and having gone there on the Tuesday evening when her husband was absent from home in order to have the needful *poojah*, &c. performed, set out with the four first prisoners, and going with them into the fields was there cruelly murdered and robbed; after which the ornaments she had about her were brought home and divided by the murderers.

It has been shown that she was last seen alive in their company; that her daughter with other persons came that very night searching everywhere for her, and were told by Dhoomun, on inquiring at his house what had become of her, that she had returned to the village; and that on the following day her body was found, or rather was pointed out by Dhoomun himself, stripped of all its ornaments. It has been further shown that some of her ornaments, together with the cloth she wore, and a *kookree* (having a cloth round its handle saturated with blood) were found in the houses of Dhoomun's cousins, Phoolchand and Moolchand and that a further portion of the ornaments was given up by their brother Dusrut. In addition to this there is the evidence of Dhoomun's wife, who speaks clearly to the fact of four prisoners having taken the deceased with them to perform the *poojah*, to their having returned and then divided the plunder, and to their having told her what they had done; that also of Phoolchand's wife, who states that Dhoomun on this very night called away her husband and his brother, and they also returned bringing some of the ornaments with

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them; and that again of Sheobuksh's mother, who deposes to having seen her own son in company with the deceased and three other prisoners; to the fact of her daughter coming to look for her, and to that of her son being absent all that night; and I submit that these facts alone form so strong a body of evidence against the prisoners as to leave little doubt of their guilt.

Their own statements again, and their conduct throughout the case, has not been such as in my opinion can at all exculpate them, or raise doubts in their favor, and all they have urged seems to me full of improbabilities. It is, to say the least of it, suspicious, that on the first inquiry these very men, and only these men, should have come forward to substantiate the case against the prosecutor, and they admit themselves that what they then swore to was false. Dhoomun's own admissions to the magistrate clearly show that he was a party concerned, whether the murder was committed by the order of the prosecutor or not, and Sheobuksh too on the trial allows that he also was present, but there are so many improbabilities in what they both urge that I utterly disbelieve them and would reject their statements *in toto;* and, setting them aside, it appears to me that there is still sufficient proof to bring the fact home to them.

The moulvee convicts the prisoner Dhoomun of wilful murder, and holds him liable by *deeyut.* He convicts Phoolchand, Moolchand, and Sheobuksh, on strong suspicion, of being accomplices in it, and holds them liable by *tazeer;* and Dusrut he convicts of being an accessary after the fact, and having possession of part of the stolen property. In this finding I entirely concur; and as I consider the crime fully established against the first four named prisoners (and a more cruel deliberate murder I think was never heard of), and as I know nothing which can be urged in their behalf, I deem it my duty to recommend that Dhoomun, as the leader and principal actor in the crime, be sentenced to death; that Phoolchand, Moolchand and Sheokuksh, as accomplices, be imprisoned or transported for life; and that Dusrut, as having been privy after the fact, be imprisoned with labor and irons for seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and J. Dunbar.)—Mr. W. B. JACKSON.—The evidence of several persons proves that on the evening of Tuesday, they saw the prisoners Nos. 1, 2, 3 and 4, with the deceased, going to the South of the village; that on being asked, the prisoner No. 1, said that they were going to perform certain *poojah,* in order that deceased might have a child. After that time the deceased was never seen alive, but her body was found on being pointed out by prisoner No. 1. The wife of prisoner No. 1 deposes, that he told her the same night that they had murdered the deceased, and brought back her ornaments, which they divided among them. She saw the ornaments in their hands; some of the ornaments were found in the houses of the prisoners Nos. 2, 3 and 5; they were given to prisoner No. 5

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to take care of by the other prisoner. The prisoner Dhoomun (No. 1) confesses that he helped the prosecutor to murder the deceased, and gave the blow which killed her himself, with a *koodal*. It is sufficiently proved that prosecutor was absent at the time of the occurrence, so that I disbelieve the charge against them. I convict the prisoner Dhoomun (No. 1) of the murder charged against him, and would sentence him to suffer death. I convict the prisoner Phoolchand, (No. 2), Moolchand (No. 3) and Sheobuksh (No. 4), as accomplices in the murder, and sentence them to transportation for life, with labor and irons. I convict Dusrut (No. 5) of being an accessary after the fact, and sentence him to seven (7) years' imprisonment, with labor and irons.

Mr. J. DUNBAR.—The evidence leaves no room to doubt, that the unfortunate woman was murdered by the prisoners, Dhoomun, Phoolchand, Moolchand and Sheobuksh, and that the ornaments were hidden by Dusrut, with a full knowledge of the manner in which they had been acquired. I concur in the conviction and in the sentences proposed by Mr. Jackson.

PRESENT:

J. DUNBAR, ESQ., *Judge*.

GOVERNMENT AND OTHERS

versus

MOCHIE SHEIKH (No. 1), RAMDHUN CHUNG (No. 2), ANAND CHUNG (No. 3), KOMUL CHUNG (No. 4), SOLIM SHEIKH (No. 5), WARIS FUQEER (No. 6) AND KOCHIE SHEIKH (No. 7).

JESSORE. 1853. February 14. Case of MOCHIE SHEIKH and others.

The prisoners' pleas in appeal not having been urged in their defence, and the evidence against them being conclusive, the conviction was affirmed.

CRIME CHARGED.—1st count, dacoity, with wounding; and 2nd count, having in their possession plundered property knowing it to have been obtained by the above crime of dacoity; and 3rd count, being one and all members of a gang of dacoits.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer, Mr. J. S. Spankie, assistant joint magistrate of Magoorah, Jessore.

Tried before Mr. R. N. Skinner, sessions judge of Jessore, on the 2nd November 1852.

Remarks by the sessions judge.—It is proved that at midnight of 20th September, dacoits armed with spears, carrying two torches, and with faces partially concealed by cloth, attacked the homes of Komul Doss and others, who live in one enclosure; wounded Komul Doss, Ramaundo and witness No. 1, and plundered property.

The chowkeedar did not report till early on 22nd September this dacoity, which had occurred on the night of 20th; he explained

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that, after vain endeavours to track the dacoits, he was in a boat on his way to the darogah, but meeting with buffalos, he jumped overboard and swam ashore. Subsequently he and Shufaoollah, gomashta, proceeded in another boat to the thanna which was ten miles off.

On this the darogah repaired to the spot and took depositions, and the next day arrested prisoners Nos. 1 and 2, who had been named by Komul Doss. They confessed, and implicated prisoners Nos. 3, 4, 5 and 7, who were apprehended early the following day, and made confessions which led to the apprehension of No. 6, who also on being captured acknowledged his guilt.

The prisoners were sent in to the assistant joint magistrate of Magoorah without delay, and confessed before him.

The confessions have been attested by the subscribing witnesses.

Portions of the plundered property were discovered in possession of the different prisoners, and duly identified.

The prisoners acknowledge before me that they made the confessions, and they afford no exculpatory evidence.

No proof of the third count of the charge appears.

Under these circumstances, considering the crime of dacoity with wounding proved against the prisoners Nos. 1 to 7, I sentence them each to imprisonment, with labor in irons, in banishment, for fourteen (14) years.

I tried the case under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The prisoners in their appeal put forward pleas, of which they made no mention when called on for their defence. The evidence against them is as strong as it could well be. The sentence is confirmed.

PRESENT:

J. DUNBAR, Esq., *Judge.*

RAM COOMAR CHUCKERBUTTY AND GOVERNMENT

versus

MOKEEM SIRDAR (No. 1), OKOOBDEE SHEIKH (No. 2), EMAMDEE SIRDAR (No. 3), SONAR SIRDAR (No. 4), ANUND SHEIKH (No. 5), MANOOLLAH SHEIKH (No. 6), EKIM GOLDAR (No. 7), KAORAH FUQEER (No. 8), MADAREE GAZEE (No. 9, APPELLANTS), RAM CHUNDER MOOKERJEA (No. 10) AND OMAKAUNT CHUCKERBUTTY (No. 11).

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The proof against the prisoners convicted of dacoity being very complete, the sentence of the sessions judge confirmed.

CRIME CHARGED.—1st count, Nos. 1 to 9, dacoity in the dwelling-house of the prosecutor, Ram Coomar Chuckerbutty; 2nd count, accomplices in the said charge; 3rd count, accessaries *before* the fact; 4th count, Nos. 10 and 11, accessaries *after* the fact; and 5th count, Nos. 10 and 11, privity to the said dacoity.

CRIME ESTABLISHED.—Nos. 1 to 8, dacoity in the house of Ram Coomar Chuckerbutty; No. 9, accessary before the fact of the dacoity, and Nos. 10 and 11, knowingly concealing a dacoity committed in the house of Ram Coomar Chuckerbutty.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 24th December 1852.

Remarks by the sessions judge.—This is an extraordinary case. The prisoners, by the proved confessions of some of them, and by the evidence of the witnesses, met together and then proceeded to attack the house of the prosecutor. They effected an entrance on the premises, but before they could carry out their object, the villagers rose against them and began to make a noise, which disturbed them and they commenced a retreat. The only way they had of making their retreat was through a narrow passage, at the end of which a brave up-country native, a *brijbasee,* stood with a drawn sword, and as each man appeared he took a well-aimed blow at him and maimed several of them.

Six only have been seized, some of whom confessed in the Mofussil and also before the magistrate.

Independent of their confessions the evidence of the eye-witnesses, who were standing close behind the *brijbasee,* while he was manfully inflicting his well-aimed cuts, could by the bright moonlight on the night of the occurrence, distinctly recognize each man. I saw the wounded men in the hospital soon after they were sent in, and the

wounds were so severe that it was doubtful if the men would live to stand their trial.

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The darogah and mohurir of the thanna of Kaghuzpookhuriah were proved to have got intimation of the occurrence, and to have knowingly concealed it, by falsifying some of the reports, and forwarding reports to the magistrate which were contrary to the truth.

Five burkundauzes when they found that their superior police officers were determined to burke the case altogether, sent in a statement to the magistrate which induced him to depute the darogah of another thanna to make investigations, and then the whole story came out.

Sentence passed by the lower court.—Nos. 1 to 8, each seven (7) years' imprisonment, with labor in irons. No. 9, three (3) years' imprisonment, with labor and irons, and Nos. 10 and 11, each a fine of rupees one hundred (100) or six (6) months' imprisonment, without labor or irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The prisoners Nos. 1 to 9 inclusive appeal.

This is a well got up case, and the proof as described in the magistrate's statement of the grounds of commitment, is very complete. I confirm the sentence of the sessions judge. I conclude that the gallant conduct of Rughoonath Brijbasee has been reported in the proper quarter, with a view to his being rewarded. I do not recollect an instance of cooler courage in a native of India, than that exhibited by this man.

PRESENT :

J. DUNBAR, ESQ., *Officiating Judge.*

TEKUM ROY, MOHI ROY AND GOVERNMENT

versus

NERUNJUN ROY (No. 1), JEHUL ROY (No. 2), RUNGOO SINGH (No. 3), JUMAY (No. 4) AND BHEEM SEN (No. 5).

PATNA.

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Case of NERUNJUN ROY and others,

In a case of riot attended with plunder of property, and with severe wounding, two prisoners sentenced to imprisonment for fourteen years, and two for seven years, with labor in irons.

The amount of fine under Act XVI. of 1850, reduced, as being in excess of the loss caused by the wrongful appropriation of the prisoners.

CRIME CHARGED.—1st count, Riot attended with plunder of property valued at rupees 300, and with severe wounding of the prosecutors Tekum Roy and Mohi Roy ; and 2nd count, severe wounding of the prosecutor, Tekum Roy, with intent to murder him.

CRIME ESTABLISHED.—Nos. 1 to 5, Riot attended with plunder of property of the prosecutors, Tekum Roy and Mohi Roy, valued at rupees 300, and with severe wounding of the said prosecutors, and Nos. 1, and 2, wounding the prosecutor, Tekum Roy, with intent to murder him.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 28th September 1852.

Remarks by the sessions judge.—It is clearly proved by the statements of the prosecutors and four eye-witnesses that Nerunjun and Jehul Roy (prisoners Nos. 1 and 2), who are father and son, came in riotous assembly with prisoners Nos. 3, 4 and 5, and others, to the number of 30 or 40, armed with swords and *lattees* to the plain where the prosecutors were herding their cattle, and commenced driving them off, and that when they remonstrated the rioters attacked and most seriously wounded, and beat them ; Nerunjun Roy is proved to have twice struck at the prosecutor Tekum Roy with his sword—the first blow cut through a *lattee* with which he warded it off, the second inflicted on him a severe and dangerous wound on the shoulder, the effects of which were such that it is likely, according to the evidence of the medical officer, he will never recover the full use of his arm ; Jeehul Roy also with a sword inflicted a wound on the prosecutor's foot. The other prisoners are proved to have beaten the prosecutors with *lattees ;* Mohi Roy so severely that both his arms were broken a little above the wrists. The sword-cuts on this prosecutor appear to have been inflicted by one of the rioters who had not been apprehended. The rioters having thus disabled the prosecutors, left them lying on the field, from which they carried off their cattle, and ponies, valued, those belonging to Tekum Roy, at rupees 85, those of Mohi Roy at rupees 60. They then went, according to the evidence of Dealee Ram, grandfather and uncle of prosecutors, and two other witnesses, and plundered their dwellings of everything they could find. As the prosecutors were sent in immediately to the station for the benefit of medical aid, and did not visit their homes before the case was committed to, and

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tried at, the sessions, they could not state the particulars of the property plundered from their several dwellings, and it is only from the evidence of Dealee Ram, who lives in the same dwelling with Mohi Roy, that the amount plundered from his house, alone valued at rupees 159-4-0, of which about rupees 8 value has been recovered, has been ascertained. The immediate incentive to these outrages on the prosecutor does not appear; but an enmity of long standing exists between the parties, and Nerunjun Roy had within the three years previous being released from jail, after undergoing a sentence of five years' imprisonment, which ensued on his conviction of the crime of burning down Mohi Roy's dwelling. He and his son defend themselves by saying that they were the party attacked and wounded and their property plundered by the prosecutors. They called several witnesses, mostly in common, of whom five were not forthcoming at the trial, but out of five present, only two were examined by them, and these said they knew nothing in their favor. Both these prisoners were admitted into the hospital suffering from wounds made with some cutting weapon, none of which was severe, but how they were inflicted there was no evidence to show. The other prisoners pleaded first, that they were accused because they refused to give evidence for the prosecutor, Jumay in the present case, Rungoo Singh and Bheemsen, in a case in which Deendeyal had accused the prosecutor Mohi Roy. These two last further pleaded an *alibi*, and Rungoo Singh mentions that he was kept seven days in confinement at the thanna after his arrest, a fact which I perceive has been noticed by the officiating magistrate. Bheem Sen also urged that the darogah had suggested his giving evidence for Mohi when he was accused by Deendyal. The witnesses of Rungoo Singh and Bheem Sen declare that they were excavating a trench with them, or in their presence, during the whole day of the occurrence at a distance of a *coss* from the spot; but this testimony I cannot believe, in the absence of any reason to disbelieve the testimony on the side of the prosecutors, so common and so generally supported by numerous witnesses is a defence of *alibi*. The witnesses for Jumay failed to prove anything in his favor. The oversight of the darogah in omitting to obtain from the prosecutors an inventory of their property plundered was pointed out to the officiating magistrate at the same time as the case was returned to him for the charge (which as first laid did not state the computed value of the property plundered) to be remodelled.

Sentence passed by the lower court.—Nos. 1 and 2, each fourteen (14) years' imprisonment with labor in irons, and a fine of rupees three hundred (300). And Nos. 3, 4 and 5, seven (7) years' imprisonment with labor in irons, and a fine of rupees two hundred (200).

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar,) The evidence for the prosecution is of the most satisfactory kind, the witnesses adhering throughout to the statements made by them in the Mofussil immediately after the riot, which statements were fully supported by all the information the darogah could gather on the

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spot. As the prisoners Nos. 1 and 2 were unable to show how they had been wounded, there is every reason to conclude, from the very slight nature of the wounds, that they were self-inflicted. I see no reason to interfere with the sentence, so far as regards the terms of imprisonment. The amount of fine directed to be recovered from the prisoners however amounts in all to rupees 1,200. Act XVI. of 1850, does not authorize fine in excess of the loss caused by wrongful appropriation of property. The sessions judge must therefore amend his order, taking care that the fines, however distributed, do not in the aggregate, exceed the value of the property carried off, less the value of any portion of it recovered.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

SOONDER BURR AND GOVERNMENT

versus

GOORAEE BURR (No 6) AND MUSST. RADHEE (No. 7).

CUTTACK. 1853. February 18. Case of GOORAEE BURR and another.

The body of the deceased not being found, the court abstained from passing a capital sentence.

CRIME CHARGED.—Wilful murder of Punchoo Burr, husband of prisoner No. 7.

CRIME ESTABLISHED.—Wilful murder of Punchoo Burr.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. A. Gilmore, sessions judge of Cuttack, on the 23rd December 1852.

Remarks by the sessions judge.—The particulars of this case are to be told in a very few words.

Gooraee Burr (the prisoner No. 6) having formed an illicit acquaintance with Musst. Radhee (the prisoner No. 7), the wife of Punchoo Burr, deceased, the two resolved, the more easily to carry on their *amours*, to murder the said Punchoo Burr; and the manner in which they effected their purpose is shown in the following confessions of the prisoners.

Confession of Gooraee Burr, recorded before the magistrate on the 11*th October* 1852.—"Punchoo Burr and his wife Radhee, having been turned out of the house of Soonder Burr, the prosecutor, at mouza Dandeebattee, came and lived with their child, four years of age, in a small *palla*, or hut, a short distance from my house in the same village; and having formed an illicit connexion with Radhee, about two months ago, she proposed to me that we should kill her husband, and go and live together unmolested at Mohurbhunj; and I agreed. The following day Radhee went with her husband and child to her father's house at Kundahur; and ten or twelve days ago, she came to my house in the evening, and informed me that she had called her husband, and that he was sitting on a bridge on the Juggernath road, and that I was to go and kill him. I then accompanied Radhee and found Punchoo sitting on a bridge, when Radhee

went up to him, and, seizing his cloth, which she twisted round his mouth, sat upon him; and I did the same, and killed or drowned him in three feet of water, in the ditch by the road side, and he, being a weak man, could not make a noise. We then concealed his body in the long coarse grass, after which I went to my own house and Radhee to her brother's at Kundahur. And Soonder Burr, the deceased's brother, having suspected me of making away with him, gave information to the *digwar*, or chowkeedar of the village, who apprehended me and took me to the police mohurir and darogah, before whom I related the above facts. It was dark, at about three *ghurries* of the night, when we killed him, and travellers had ceased to pass along the road. The place where he was killed is half a *coss* from my house at Boodeah Bridge."

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Confession of Musst. Radhee recorded before the magistrate on the 11*th of October*, 1852.—"About six months ago, the prisoner Gooraee Burr formed an illicit connexion with me. And on Tuesday last, the 15th Assin, at which time I was living at my brother's, as I was going with Musst. Cumlee to sell fish, Gooraee Burr, who was standing on the bank of the Gobindapookree, or tank, saw me, and called out to me by name, *viz.*, Harria Mah, and on my going to him he offered to keep me and support me, and said that he would kill my husband; that if it cost ten or fifteen rupees he would pay the money, and I agreed and told him to do so, and I would live with him. I then went to my brother's, and the following day towards evening I went and sat on the broken bridge near my own house at Dandeebattee, and sent Chundree Kundroonee to tell my husband, Punchoo Burr, to bring my child to see me. Punchoo Burr then brought my son, and I took him in my arms, and on missing a silver *kuntee* or bead from his neck, I asked where it was, when my husband said it was at his sister's house, and he went and fetched it, but did not give it to me; and as we were sitting talking together on the bridge, Gooraee Burr came and seized hold of my husband, on which my child commenced crying, and I held him in my arms, while Gooraee Burr took my husband to the ditch by the side of the road, and sat on him for two *ghurries* in the water, waist-deep, and killed him, and told me to tell no one. Gooraee Burr then buried or concealed the body in the *dhan* field, after which I went with my son to my brother's, and Gooraee Burr went to his own house, and two days ago, I was apprehended by a *thanna paik* and taken before the darogah, to whom I related the above;" and on being questioned by the magistrate, she said, "We consulted to kill my husband one day previous to the murder. I did not twist the cloth round his neck. My husband did not call out, because Gooraee Burr twisted his cloth round his mouth. He was killed at one *ghurree* of the night. No one was going along the road at the time. No weapon was made use of to kill the deceased; he was strangled."

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Case of GOORAEE BURR and another.

The Mofussil confessions of both prisoners are the same as the above, and all the confessions are proved by the subscribing witnesses to have been voluntarily made.

Soonder Burr, the prosecutor, the brother of the deceased Punchoo Burr, as well as the witnesses generally, depose to the fact of a criminal intercourse having existed between the two prisoners, and some of them state they heard Radhee and some Musst. Chundree, call the deceased from his house at Dandeebattee, on the evening of the murder; and Musst. Chundree herself affirmed that as she was passing along the road by the bridge (Utbateeah) the prisoner Radhee, with whom she was not before acquainted, told her to call her husband Punchoo, and that she stood by the Dandeebattee bridge, one *teer* distant from Punchoo Burr's house, and called him.

Both prisoners pleaded "*not guilty*" before this court, and stated they were beat by the police to make them confess; but they could adduce no witnesses in support of their assertion.

The prisoner Gooraee Burr named five witnesses to his general character, but they stated nothing in his favor.

The *futwa* of the law officer convicts the prisoner Gooraee Burr, of the wilful murder of Punchoo Burr, deceased, and Musst. Radhee of being an accomplice in the said murder, on the ground of their Mofussil and foujdaree confessions, and declares them liable to punishment *(akoobut)* compatible with the crimes established; and in this verdict I fully concur, and would recommend that Gooraee Burr be sentenced to suffer death; and that Musst. Radhee be sentenced to imprisonment for life, with labor. The moral guilt of Radhee I consider fully equal to that of her paramour, Gooraee Burr; but she denies having twisted the cloth round her husband's mouth or laid hands, on him as alleged by the other prisoner, and the fact of her having had her child in her arms renders her statement probable. She is said to be six months gone with child.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners are convicted on their own confessions proved to be quite voluntary. The prisoner Gooraee Burr admits that he concealed the body in the long coarse grass in the ditch or rather canal which runs along the side of the high road to Cuttack, and the female prisoner states that he hid it in the rice field. They pointed out the places of concealment, but the body was not found. It is supposed that the strong current bore the body, when it floated, to the tidal river into which the water-course flows. This is very probable; but as the conviction is based on the confessions, and the confessions are only corroborated by the fact of the disappearance of the deceased, I do not think the evidence of the *corpus delicti* is as sufficiently cogent and irresistible as to warrant my proposing an irrevocable sentence. I therefore sentence both the prisoners to imprisonment for life, Gooraee Burr in transportation, and the female prisoner in the zillah jail.

PRESENT:

R. H. MYTTON, Esq., *Officiating Judge.*

GOVERNMENT

versus

ALLUM SHEIKH.

RAJSHAHYE.

1853.

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Case of ALLUM SHEIKH.

Prisoner charged with perjury in having, in an Act IV. case, in which Kullum was prosecutor, denied that Kullum was his father-in-law, which was untruly stated, with intent to obtain more credence to his evidence; convicted and sentenced to three years' imprisonment. Sentence confirmed in appeal.

CRIME CHARGED.—Perjury, in having, on the 1st December 1852, deposed, under a solemn declaration taken instead of an oath, before the officiating joint magistrate of Pubnah, that he was not the son-in-law of Kullum Sheikh then present; such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. F. Beaufort, officiating joint magistrate of Pubnah, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 28th December 1852.

Remarks by the sessions judge.—The case was tried with the assistance of two assessors; one, the moonsiff of Nattore, who was in attendance as a witness in another case, and the other, Moulvee Busseruddeen, brother of the moonsiff of Khegtooparah and a sunnud-holder. It will be seen, from the charge that the assignment of perjury was in the prisoner's having denied being the son-in-law of one Kullum Sheikh. His having made the denial being fully proved, as well as the fact of his being Sheikh Kullum's son-in-law, who was in court, and pointed out by four witnesses for the prosecution, and two for the defence, as the prisoner's father-in-law. I explained to the assessors, that if they thought such denial was made with a view to the joint magistrate placing more reliance on his evidence (given in an Act IV. case, and for the complainant,) they, under precedents of the superior court, must find him guilty of perjury. They on this brought in a verdict of "*guilty;*" and concurring in the finding, I have sentenced the prisoner as stated.

Sentence passed by the lower court.—Three (3) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner appeals, asserting that the question was put to him whether he was Kullum Sheikh's "*damad;*" not understanding which, he answered, no; but that he afterwards heard that it meant "*jamota*". This amounts to a defence that the word used in the question put to him was Hindoostanee, which he did not understand, and that his answer was given in ignorance of the meaning of the question.

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On referring to the deposition in which he is charged with committing perjury, I find that this plea is unfounded. The questions were put in Bengalee as follows:

Question.—What relation is prosecutor to you?
Answer.—None.
Question.—Did you *marry (shadee)* his daughter?
Answer.—No.
Question.—Did you marry (*bibaho*) Sheikh Kullum's daughter?
Answer.—No.
Question.—Are you married?
Answer.—Yes.
Question.—To whose daughter?
Answer.—Kullum Sheikh's.
Question.—Is that Kullum, the prosecutor?
Answer.—No.

In his defence in the sessions he admits that the Kullum present is his father-in-law and states that he said so in the foujdaree court and never denied it. That Kullum is proved to have been the prosecutor in the Act IV. case.

The prisoner's plea in appeal is utterly unfounded and his appeal is rejected.

PRESENT:

J. DUNBAR, ESQ., *Judge*.

RUGOBER SUHOY AND GOVERNMENT

versus

KAREMUN ALIAS NONHAK (No. 8), DEENAH (No. 9), DALLU (No. 10), SOOPUN (No. 11) AND BUKSHOO (No. 12 APPELLANT).

PATNA. 1853. February 18. Case of BUKSHOO (appellant) and others.

Although only one prisoner appealed, the sentence on all was affirmed.

CRIME CHARGED.—Wilful murder of Deochund.

CRIME ESTABLISHED.—Culpable homicide of Deochund.

Committing Officer, Mr. W. T. Tucker, officiating magistrate of Patna.

Tried before Mr. W. Travers, officiating sessions judge of Patna, on the 14th September 1852.

Remarks by the officiating sessions judge.—The particulars of this case are as follows:—It appears that on the night of the 12th August last, the neighbours were disturbed by an uproar and alarm in the house of one Musst. Imamun, and on going there saw the deceased, Deochund Doss, being bound and beaten by the prisoners Karemun (No. 8), Deenah (No. 9), Dallu (No. 10), Soopun (No. 11) and Bukshoo (No. 12), Musst. Imamun was also present and said that the deceased had come into her house for evil purposes. The prisoners were told to desist, but would not, declaring that the deceased had come into

Imamun's house for the purpose of dishonouring her in the absence of her husband. The above is proved by the clear and uncontroverted evidence of four eye-witnesses. These men also depose that they took the deceased to the cutcherry of the zemindar, where he died two days afterwards. The evidence of the witnesses to the *sooruthal* proves the marks of violence on the deceased's body, and the civil surgeon who examined it after death also deposes to the injuries it exhibited, and declares that death resulted from them. The prisoners have established nothing in their defence to exonerate themselves of the charge. The law officer convicts the prisoners of culpable homicide, a finding in which I concur, but as I do not think the prisoners intended killing the deceased, I am of opinion that seven (7) years' imprisonment, with labor and irons, will be sufficient punishment, and I have sentenced the prisoners accordingly.

1853. February 13. Case of BUKSHOO (appellant) and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner Bukshoo has alone appealed against the sentence. The evidence against the whole of the prisoners has however been considered. It is clear and positive, and nothing has been advanced to shake it on the part of the prisoners. The sentence of the sessions judge is confirmed.

PRESENT

W. B. JACKSON, AND J. DUNBAR, ESQRS., *Judges.*

BHEENUK RAI AND GOVERNMENT PLEADER

versus

MOOSUN RAI (No. 28), RUNGOO (No. 29), GOODUR (No. 30), AND JHAMELEE ROUNIAR (No. 31).

SARUN.

1853. February 18. Case of MOOSUN RAI and others.

Party convicted of murder on his confession attended with circumstances corroborative of the same, and sentenced to death.

CRIME CHARGED.—1st count, No. 28, wilful murder of Sheolochun Chokra; 2nd count, No. 29, accessary after the fact, and 3rd count, Nos. 29 to 31, having stolen property in their possession knowing it to have been stolen.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 30th December 1852.

Remarks by the sessions judge.—I refer this case, both because it is one which I am clearly incompetent to dispose of myself, and because I dissent with the moulvee in his finding as regards the prisoners Moosun and Rungoo.

The facts are shortly as follows:—On the afternoon of Thursday, the 25th November, Sheolochun (the deceased), a boy of some nine years of age, went out to watch some grass; and not returning, the

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prosecutor (his grandfather's brother) went off to look for him, and hearing from two persons that they had seen him in the evening with the prisoner Moosun, he went to his house to inquire for him, but learnt from his wife, that he (prisoner) had gone off to the fair at Godna to bathe.

Nothing more was heard of the child that night, but the following morning (Friday) the search being renewed, the prosecutor was told by a man named Hurruk Bind (who was fishing) that the body of the child was lying in the river, and when it was taken out, it was found to be that of the boy, but the ornaments and clothes, &c., had been removed from it. Upon this, as the prisoner was at once suspected of having murdered the boy, the prosecutor sent off his son and nephew to look for him at the fair, but they met him as he was returning from it, and at once seized and brought him back with them, when he was, with the body, sent in to the thanna.

The prisoner at first denied all knowledge of the crime, but when during the course of that day (Saturday) the prisoner Rungoo (No. 29) came forward and gave up a *bijait* which had belonged to the boy, and which he said he had got from him, and five other pieces of silver, which had composed a bracelet belonging to the boy, were also traced to have been given in pledge to him, he made a clean breast of it, and confessed that he had killed the child for its ornaments.

To the magistrate the prisoner repeated this confession, and said that he had killed the child for its ornaments; that when they were bathing together he had hold of his throat as he ducked his head in the water, and kept him under until he ceased to breathe, after which he took off his ornaments and clothes, and leaving the latter on the bank, took away the ornaments, and the same evening made over the bracelet to Sheochurn Sonar (Goodur's father), who told him he would give him rupees 2 for them if he came to the Godna fair, in consequence of which he had gone there, and had got one rupee's worth of pice for them; and that he had been apprehended when returning the next day from thence. On this occasion he said nothing of Rungoo's taking the *bijait* from him, but at the thanna he said that when he had been apprehended, Rungoo and Mohum Gorait had asked him what he had done with the things, and that Rungoo had then got the *bijait* of him and had taken it away.

Rungoo stated to the magistrate that he had met the prisoner and had asked him where he was going, and not getting a satisfactory reply, and seeing the red string of the ornament sticking out of his waistband had pulled it out; that he had at first thought of charging the prisoner with theft, but hearing of the murder, and that the body had been sent in, he had gone himself and had given it up to the Moonshee.

Goodur stated that he had seen the prisoner with his father at the fair, and by the desire of the latter had taken the five pieces of silver to Jhamelee, with whom he had pledged them for rupees 2, which he

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gave to his father, when the latter gave one to the prisoner Moosun, and kept the other at his request to give to a woman whom he named.

Jhamelee spoke to the same effect, and said that the pieces had been pledged with him by Goodur, and that he described them as his own.

Doctor Simpson states that in consequence of the decomposed state of the body when he examined it, it is impossible for him to state whether the child's death was caused by strangulation or drowning, but that it clearly did not arise from a natural cause, and was the result of violence.

On his trial at the sessions the prisoner Moosun denies his guilt, and says that the child must have been drowned by accident, and that he knows nothing whatever of the *bijait*, and never gave it to Rungoo; but he admits having pledged the five pieces of silver ornament, through Goodur to Jhamelee, and says that they are his own. He allows that he was taken when returning from the fair on Friday, and says that the man who apprehended him accused him of the murder, and that he confessed at the thanna in consequence of having been beaten, and to the magistrate at the instigation of the burkundauz who brought him in.

Rungoo repeats the story of his having met the prisoner on Thursday, and having taken the *bijait* on seeing the string of it sticking out of his waistcloth; and that hearing of the murder the next day, he had become greatly disturbed and in the end had taken it and given it to the mohurir.

Both Goodur and Jhamelee admit having been engaged in the pledging of the five pieces of silver bracelet, but they deny all guilty knowledge concerning it, and as I concur with the moulvee in thinking that there is no reason to suppose that they were aware of what had happened, I have, in concurrence with the *futwa*, directed them both to be released.

The moulvee convicts the prisoner Moosun of culpable homicide only, and holds him liable by *deeyut*, or price of blood, Rungoo he convicts on strong suspicion of having knowingly been in possession of property belonging to the deceased, and he holds him liable to punishment by *tazeer*. I differ with him however on both points, and consider Moosun guilty of wilful murder; whereas as regards Rungoo, I do not see that there are sufficient grounds for a conviction at all. He admits, indeed, having taken the *bijait* from the prisoner Moosun, and it is certain (as he confesses that he heard of the murder on the Friday) that he kept it much longer than was necessary.

It is, however, clear that he gave it up of his own free-will, and we are, I think, bound to take his own statement of the affair as the true one, and as there is nothing in it to show that he was cognizant of the murder, I would acquit and release him.

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The case of the prisoner Moosun is however very different, and I have no doubt whatever of his having murdered the child for its ornaments. He confessed it himself both at the thanna and to the magistrate, and these confessions have been backed and corroborated by the fact of all the ornaments having been traced to his possession.

I consider him guilty of a most cruel and deliberate murder and robbery, and as I know of nothing to be urged in his behalf, I deem it my duty to recommend that he be sentenced to death.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and J. Dunbar.)—MR. W. B. JACKSON.—The prisoner Moosun Rai has made a clear and ample confession of the murder of Sheolochun, a boy of nine years of age, for the sake of his ornaments; both in the Mofussil and before the magistrate. The truth of this confession is established by other evidence, the finding of some of the ornaments which were on the child's person, and his being seen the night on which the child was missing with the child, and the finding of the child's body in the water. I convict the prisoner Moosun Rai of the murder and sentence him to suffer death. I acquit the other prisoner.

MR. J. DUNBAR.—The statement of Moosun Rai that he was beaten in the Mofussil and thus made to confess, and that Bhajoo Burkundauz induced him to repeat the confession before the magistrate is not supported by any evidence. The confession before the magistrate appears to have been taken with due care, and the circumstantial evidence is very strong. I concur in convicting him of the murder and in sentencing him to suffer death. I acquit the prisoner Rungoo Chowkeedar.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

BUGHOO RAOTH AND GOVERNMENT

versus

GOPEE NEKA (No. 1), OOCHUB PYRAH (No. 2), NATH NEKA (No. 3) GOPEE DAY (No. 4), KOOSUN NEKA (No. 5) AND GOPEE MAINTY (No. 6).

CUTTACK.

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Case of GOPEE NEKA and others.

The prisoners, native subjects of the British Government, were tried and convicted under Act I. of 1849, of murder and robbery in a foreign state. Sentence, transportation for life, as they were only inferior actors in the crime.

CRIME CHARGED.—Robbery attended with the murder of Gangoo Raoth, father of prosecutor, the property stolen being valued at Company's rupees 7-12-0.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 27th December 1852.

Remarks by the sessions judge.—The crime laid in the charge having been committed in the estate of Killa Neelghur, a tributary mehal, exempt from the operation of the Regulations, by parties residing in the Balasore district, the case has been tried before the court, in conformity with the orders of the Most Noble the Governor of Bengal, dated 14th October last, under Sections III. and IV. Act I. of 1849.

The prosecutor was absent from home on the night of the occurrence, but it appears from the evidence of Baie Raoth, the nephew of the deceased, that between 1 and 2 o'clock A. M., on Tuesday, the 20th January 1852, he, the said Baie Raoth having awoke and been about to sit down to smoke, heard a rustling of some straw, when he opened the door of the house in which he was, and looking in the direction of the *rullah*, or granary, saw some thieves pulling out the sheaves of *dhan* from the stack and others carrying them away; that he then went and gave information to his uncle, Gangoo Raoth, the deceased, who was sleeping in his own house, and who got up and ran after the thieves and seized hold of one of them, who called out to his companions by name to come to his assistance, as he had been apprehended, and told that if they did not he would inform against them, and they would all be apprehended the following day; that the other thieves then returned to his rescue, and he (witness) became alarmed and ran and called his neighbours, and on the arrival of Pooree Mainty and Dass Poorshtee, he went with them to the spot where the thief had been seized, and heard the rustling of the *dhan* as the thieves were carrying it away, but did not see or hear the deceased; and as they were returning towards their houses, Pooree Mainty's foot struck against the body of Gangoo Raoth, and on fetching a light they found that he was dead, and that he had received a sword-wound extending all along the buttock to the knee of the right leg; another wound, three

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fingers breadth in length, on the head, and bruises in various parts of the body; and other villagers having by this time collected and become acquainted with the facts of the case, they removed the body to the deceased's *denkee sal*, and in the morning reported the occurrence to the Neelgurh Rajah, in whose estate it took place. Nitranund Patnaik, a mohurrir, was then deputed by the said Rajah to inquire into the case, and he having reached the spot at noon on Wednesday, forwarded the body to Balasore. And on the 22nd January the darogah of thanna Balasore was directed by the magistrate, in his ex-officio capacity of assistant to the superintendent of the Tributary Mehals, to proceed to the spot and investigate the case, conjointly with the teehsildar of Neelgurh, and the prisoners were apprehended on the grounds of their having been named or called out to by the thief who was caught by the deceased Gangoo Raoth.

The whole of the prisoners confessed in the Mofussil and before the magistrate of Balasore, and the following is the purport of their several statements:

Confession of Gopee Neka, (prisoner No. 1,) recorded before the magistrate of Balasore on the 28th January 1852.—" On the night of the 9th Magh Lukhun Purrera, my fellow-villager, called me to his house and told me to accompany him to fetch some *dhan;* and on his taking me to the *Burpookree* or tank, Pohul Swyn, *badmash*, (a bad character) inquired of Lukhun Purrera if those persons whom he had been to call had all assembled, and he replied in the affirmative. I there saw Pohul Swyn, Koosun Neka, Nath Neka, Gopee Mainty, Gopee Day, and Oochub Purrera, and Lukhun Purrera had a *kuttooree* or axe, Pohul Swyn a sword, and Oochub Purrera a stick, in their hands. At about 7 *ghurries* of the night we reached the deceased's *rullah*, and I stood at a short distance from it, while the others went and fetched four sacks of *dhan*, and one of which Pohul Swyn put on my head, and I took it, as did Oochub Purrera, Koosun Neka and Gopee Mainty the other three sacks, and placed it by Pooree Mainty's *pookree*, or tank, and then returned to fetch away the *dhan* sheaves, and seven of the party each brought a sheaf. And after we had gone half way (between the *rullah* and the *pookree*) Gopee Day transferred the load he was carrying to me and went back to fetch another. And as he was bringing it away and had got about twelve cubits from the *rullah*, he was apprehended by Gangoo Raoth, and he called out to Pohul Swyn, Lukhun Purrera, Koosun Neka, and others, by name, to go to his rescue. We all then ran towards them, and saw Gopee Day had hold of the deceased by the neck, and the deceased was holding him by the waist, and Pohul Swyn struck him a blow on the leg with his sword and Lukhun Purrera struck him on the head with his *kuttooree*, while Gopee Day squeezed his throat, and he fell to the ground, and we all absconded, leaving behind the *dhan* sheaves and only carrying away the four sacks of grain. And on my refusing to

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take any share of the *dhan*, Pohul Swyn and Gopee Day said they would each take two *puts* or sacks of the *dhan*, and Nath Neka said he would take two of the sacks and bury them. They then all went to Nath Neka's house, whence Gopee Day and Oochub Purrera each carried a sack of *dhan* to Gopee Day's house, and I went away, leaving Pohul Swyn and the others at Nath Neka's house, and what the others took I know not. No one was of the party but the above eight persons. I neither took any of the *dhan* nor the sacks. I confessed of my own free-will before the darogah. Nath Neka and Koosun Neka are my brothers, but we are separate, and Pohul Swyn is my brother-in-law."

Confession of Oochub Pyrah alias Purrera, (prisoner No. 2), recorded before the magistrate on the 28*th January* 1852.—"On the night of Tuesday, the 9th Magh, Lukhun Purrera came to my house and took me to the *Burpookree* or tank within call of my house, where I saw Pohul Swyn, Koosun Neka, Nath Neka, Gopee Day, and Gopee Mainty sitting; and Pohul Swyn had a drawn sword and Lukhun Purrera a *kuttooree* in their hands. Lukhun Purrera told me to sit there while he went to call Gopee Neka, and on his return with him, Pohul Swyn asked Lukhun Purrera if he had collected every one, and at midnight we, eight persons, sallied forth, and after we had gone a short way across the fields, I inquired of Lukhun Purrera where they were going, and on his telling me that Gopee Day had got tidings of four sacks of *dhan* in Gangoo Raoth's *rullah*, and they were going to fetch them, I at first objected to accompany them, but they over-persuaded me, and I went and stood by the *tattee*, or door, while the other seven went into the *kullah*, whence Gopee Day, Koosun Neka, Lukhun Purrera, and Pohul Swyn, each brought out a sack of *dhan*, and Pohul Swyn having transferred his sack to Gopee Neka's head, they went and placed them by Pooree Mainty's tank, and returned thence to fetch away the *dhan* sheaves, when I, as before, stood by the *tattee*. And as six of the party were bringing away six *beeras* or sheaves, Gangoo Raoth pursued us and apprehended Gopee Day, who called out to us all by name, to come to his rescue; and on our going back I saw Gangoo Raoth had got hold of Gopee Day round the waist, and that Gopee Day had seized him by the throat. Koosun Neka then said, he (Gangoo Raoth) would give information against them and proposed to kill him; and Lukhun Purrera first struck him on the head and Pohul Swyn on the leg with his sword, and on his falling to the ground, we went to the place where we had placed the four sacks of *dhan*, and Pohul Swyn and Gopee Day each agreed to take one *chela* (two sacks) of *dhan*, and I and Gopee Day carried the *dhan* to Gopee Dey's house, and Pohul Swyn took his *dhan* to Nath Saho's house, whence he removed it the following day, and we all went to our own houses. The next day a number of persons collected at the deceased's house, and I went and saw his

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body in the *denkee sal*, and I was apprehended four or five days afterwards by the Balasore thanna darogah before whom I confessed. I did not take any of the *dhan* because a man had been killed."

Confession of Nath Neka, (prisoner No. 3,) recorded before the magistrate on the 29th January 1852.—"On Tuesday night, the 9th of Magh, my brother-in-law, Pohul Swyn, and Koosun Neka, my younger brother, called me from my house, saying Lukhun Purrera, who was at the *Burpookree*, had sent for me. I then accompanied them to the *pookree*, where we were joined by Lukhun Purrera, Gopee Mainty, Gopee Day, and Oochub Purrera, and we all sat there while Lukhun Purrera went and called Gopee Neka, my second brother, who lives in a separate house. And on my asking the said eight persons where they were going, Lukhun Purrera and Pohul Swyn said Gopee Day had got trace of some *dhan* in Gangoo Raoth's house, and they were going to steal it. On this, I objected to accompany them, but they over-persuaded me. We then went to the *tattee* of the deceased's *rullah*, which Pohul Swyn opened, and we all entered, and I and Lukhun Purrera, Pohul Swyn and Gopee Neka, each brought away a sack of *dhan*, and placed them by Pooree Mainty's tank, and then went back to fetch the *dhan* sheaves. And as we were each bringing one away, at about eighty cubits from the *rullah*, Gopee Day was apprehended by the deceased, and he called out to Pohul Swyn and Lukhun Purrera by name, saying he had been seized and we were absconding, we would all be apprehended the following day. We then returned to his rescue, and I saw Gangoo Raoth had hold of Gopee Day by the waist, and that he had hold of Gangoo Raoth by the throat, and Pohul Swyn struck Gangoo Raoth a blow on the leg with his sword, and Lukhun Purrera struck him on the head with his *kuttooree*, and he fell down dead. We then absconded, bringing away only the four sacks of *dhan* which I and Gopee Day, Pohul Swyn and Lukhun Purrera, carried to the *Burpookree;* and it was there agreed, that Pohul Swyn was to take two sacks, and I and Gopee Day each one. And we went to our houses and I expended or used the *dhan*. Pohul Swyn also placed his two sacks of *dhan* in my house, and his son-in-law, Aintee Jenna, carried them away on bullocks the next day, and I placed the sack which I had emptied on the pack saddle, and he took it away. The darogah came on Saturday and apprehended me, and on Tuesday I confessed."

Confession of Gopee Day, (prisoner No. 4,), recorded before the magistrate on the 29th January 1852.—"On Tuesday evening, the 9th of Magh, Lukhun Purrera came to my house and told me to accompany him to steal some *dhan*, as it was dear, or there was a scarcity of the article. And though I objected, he compelled me to go with him to the *Burpookree*, where I saw Pohul Swyn, Koosun Neka, Gopee Neka, and Gopee Mainty, sitting. Lukhun Purrera than told me to go to Gangoo Raoth's on pretence

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of searching for my cow, and ascertain the state of his *rullah*, and they would afterwards go there. And I went and saw four sacks of *dhan* at the door of the *palla* or hut inside the *rullah*, and on Baie Raoth's and Pooree Mainty's asking me why I had come there, I said I was searching for my cow. I then returned to the *Burpookree* where the others were, and saw that Oochub Purrera and Nath Neka had joined them, and that Pohul Swyn had a drawn sword and Lukhun Purrera a *kuttooree* in their hands, but the others had nothing. I then went to my own house, and all the others went to Nath Neka's house; and at seven *ghurries* of the night, or between 11 and 12 o'clock, Lukhun Purrera came and called me, and took me to the *Burpookree* where all the prisoners were assembled, and we went to the prosecutor's house. Who opened the *tattee* I did not see, but all went into the *rullah* except Oochub Purrera and Gopee Neka, who stood outside. And Lukhun Purrera, Koosun Neka, Pohul Swyn and I, each took a sack of *dhan* and came out with them, when Pohul Swyn transferred his sack to Gopee Neka and returned to the *rullah*, while we went and placed the sacks by Pooree Mainty's tank, and afterwards went back to the *rullah* to fetch the *dhan* sheaves. And each of us took one, and were bringing them away, when I, who was behind the others, was apprehended by Gangoo Raoth, and the rest threw down their bundles and absconded. I then held the deceased by the throat, and called out to the others, that I was apprehended, and that they would all be caught the next day; and on hearing this they returned and endeavoured to rescue me, but the deceased would not let go his hold, and Pohul Swyn struck him a blow on the leg with his sword; but he still continued his grasp, and Lukhun Purrera struck him on the head with his *kuttooree*, when he fell, and we all absconded to the place where we had left the sacks of *dhan*, and Pohul Swyn took two sacks, which he placed in Nath Neka's house, and I took two sacks to my house, the others took none. Next day, on hearing Gangoo Raoth was dead, I went to Lukhun Purrera's house, and said I would not keep the *dhan*, as a man had been killed, and he told me not to fear, he would take it away in the evening, and at two *ghurries* of the night he and Nath Neka each brought a sack and took away the *dhan*, but left a sack with me, which I buried. On the 11th Magh, I went to Balasore and returned home on the 12th, Sunday, when I was apprehended, and I was first questioned on Tuesday, when I denied, as Lukhun Purrera told me, but the next day I confessed. I called out the names of all the prisoners when I was apprehended."

Confession of Koosun Neka, (prisoner No. 5,) recorded before the magistrate on the 30*th January* 1852.—"On Sunday evening, the 7th of Magh, Pohul Swyn called me to his house, where I met Gopee Day, who said that Lukhun Purrera had informed him that there was *dhan* in Gangoo Raoth's *rullah*, and that on Tuesday they were going to steal it. Gopee Day then went away, and as he told

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us, we two went on Tuesday to Nath Neka's house at about 2 P. M., when Nath Neka called Lukhun Purrera, and after arranging to commit the theft, as some hours of the day still remained, I bought one pice worth of *julpan* from the shop of Phugoo Sahoo, and a goat from Nath Neka for six annas, and went home with Pohul Swyn and eat some rice, and, as directed by Lukhun Purrera, between 8 and 9 P. M. returned to Nath Neka's house, whence Pohul Swyn sent Nath Neka to call Gopee Dey and Lukhun Purrera, and at midnight I, Pohul Swyn, Nath Neka and Gopee Day, went and sat at the *Burpookree*, and Lukhun Purrera called Gopee Neka and Oochub Purrera, after which Pohul Swyn, with a drawn sword in his hand, and Lukhun Purrera with a *kuttooree* told us to sally forth; and we, eight persons, went to Gangoo Raoth's *rullah*, the door or *tattee* of which Pohul Swyn opened; and Gopee Day, Pohul Swyn, Gopee Neka and Oochub Purrera, entered and brought out four sacks of *dhan*, and Pohul Swyn having transferred his sack to Nath Neka, they went and placed them by Pooree Mainty's tank, and returned thence to the *rullah*, whence Gopee Day brought a sheaf of *dhan* and placed it on Gopee Neka's head, and then went to fetch another, and as we were coming, each carrying a bundle of *dhan*, Gopee Day was apprehended by Gangoo Roath; and we threw down our loads and were absconding, when Gopee Day called out and said we were all leaving him behind, and he would disclose all our names the following day. Hearing this, we returned and endeavoured to rescue him, but Gangoo Raoth would not let go his hold; and Lukhun Purrera proposed that he should kill him, and we stood aside, while Pohul Swyn first struck him a blow on the leg with his sword and Lukhun Purrera struck with his *kuttooree* on the head, and he fell to the ground. We then went to Pooree Mainty's tank, whence Gopee Neka, Gopee Day, Oochub Purrera and Nath Neka, each took a sack of *dhan*, and went to the *Burpookree*, where Lukhun Purrera asked who would take the *dhan*, and Pohul Swyn said he would take one *chela*, but I, and Gopee Naik and Oochub Purrera, declined to take any, as we had no *dhan* in our house. Pohul Swyn then took one *chela* of *dhan* and placed it in Nath Neka's house, and Gopee Day and Lukhun Purrera each took one *put*, or sack, which they placed in Gopee Day's house, and we all went home, and the next day Aintee Jenna, brother-in-law to Pohul Swyn, brought bullocks to Nath Neka's house and took away the *dhan*. Afterwards the Balasore thanna darogah came and apprehended Oochub Purrera and Gopee Neka and others, and they named me and I was arrested on Wednesday last, and I confessed.

"Pohul Swyn is brother-in-law to Nath Neka and Nath Neka and Gopee Neka are my brothers. I have made both confessions of my own free will."

Confession of Gopee Mainty, (prisoner No. 6,) recorded before the magistrate, on the 30th January 1852.—Last Tuesday night, at about eight o'clock, I was sleeping at home, when Lukhun Purrera

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called me up and told me to go with him to fetch *dhan* from Gangoo Raoth's *rullah;* and after much persuasion I accompanied him, and on the road he called Gopee Day. We three then went to the *Burpookree*, where Pohul Swyn, Nath Neka, Koosun Neka, Gopee Neka, and Oochub Purrera also arrived about the same time. In all we numbered eight persons, and Pohul Swyn had a sword and Lukhun Purrera a *kuttooree* in their hands. Gopee Day said he had seen four sacks of *dhan* in the *palla* inside Gangoo Raoth's *rullah*, and at midnight we all went to the *rullah*, the door of which Pohul Swyn, with a drawn sword in his hand, opened, and Gopee Day having pointed out the sacks, Pohul Swyn and Lukhun Purrera placed one sack on mine, and Koosun Neka's, and Gopee Neka's and Oochub Purrera's heads, which we took and placed by Pooree Mainty's tank and returned thence to the *rullah* to fetch away the *dhan* sheaves. And we were each carrying a bundle away, when Gopee Day transferred his load to Gopee Neka and went back to fetch another, and as he was bringing it, he was apprehended by Gangoo Raoth, and we were absconding when Gopee Day called out to Pohul Swyn, Lukhun Purrera, and Oochub Purrera, by name, and said he would cause the whole of us to be apprehended the next day; hearing which, we threw down the *dhan* sheaves and ran towards them, and seeing that Gangoo Raoth had seized Gopee Day by his arms, we endeavoured to release him, but Gangoo Raoth would not let go his grasp. Pohul Swyn then struck him a blow on the leg with his sword, on which he said that if he was killed he would not let go his hold, and Lukhun Purrera struck him on the head with his *kuttooree*, when he fell to the ground, and we all absconded, taking with us only the sacks of *dhan*, which I, Gopee Neka, Oochub Purrera and Koosun Neka, carried to the *Burpookree*. Pohul Swyn and Lukhun Purrera then asked us all who would take the *dhan?* and I, Oochub Purrera, Gopee Neka and Koosun Neka, refused to take any, as a man had been killed, and as we had no *dhan* in our houses, it would lead to our detection. Pohul Swyn then said he would take two sacks and Gopee Day and Nath Neka each one sack. Who carried away the *dhan* thence, I did not see; but Pohul Swyn took his two sacks to Nath Neka's house, and Gopee Day took two to his own house; and I and the others went to our respective houses. Next day I heard Gangoo Raoth had died, and when I saw Nath Neka he told me that out of the two sacks of *dhan* carried away to Gopee Day's house, he, Gopee Day, had taken the grain from one and buried the sacks, and that he, Nath Neka, had taken the *dhan* from the other, but did not mention what he had done with the sack. When Pohul Swyn removed the *dhan* from Nath Neka's house I do not know. The darogah afterwards came and apprehended me and took my answer two days after I was apprehended. I am not related to any of the other prisoners. I have made both confessions of my own free will."

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The Mofussil confessions of the prisoners are to the same effect as those above recorded. And both confessions were proved by the subscribing witnesses to have been voluntarily made.

Before this court the prisoners all plead "*not guilty,*" and allege generally, that they were tutored and maltreated by the police and others to make them confess, and were told that if they made certain statements implicating others, they would be admitted as witnesses. They also assert that they were either at their own houses or engaged with the other villagers driving away wild elephants from their crops, at the time the occurrence took place. And Gopee Neka (prisoner No. 1) stated, that the darogah gave him rupees 2 to induce him to confess. But though they cited several witnesses in support of their assertions, none of them gave any evidence that can be relied on, or that is in any way sufficient to counteract the confessions made by them before the magistrate of Balasore.

The *futwa* of the law officer, herewith forwarded, convicts all the prisoners, Nos. 1 to 6, on their own confessions, and the circumstances of the case of being accomplices in the robbery attended with the murder of Gangoo Raoth. And in this verdict I concur, for although I think it somewhat dubious, with reference to the hour of the night at which the robbery occurred, and the fact of the captured thief having been engaged in an active struggle with his captor, whether the said thief would have called out to *all* his companions by name, or that the neighbours of the deceased who were asleep in their houses would have heard their names if he did thus call out to them, and it is moreover somewhat strange, that although the confessing prisoners state that they were all carrying away large bundles or sheaves of *dhan,* which they threw away on hearing that Gopee Day was captured, only one sheaf, or a small quantity of straw *dhan,* was found near the body of the deceased, and whereas none of the prisoners confessed until the third day after they were apprehended; the prisoner No. 3 did not confess until the fourth, and No. 6 until the fifth day, after they were apprehended; I do not consider these circumstances sufficient to cast distrust on the general genuineness of the confessions. And with reference to the circumstances of the case, (it not appearing that the prisoners premeditated committing more than a simple robbery of some *dhan,* or that they individually wounded or killed Gangoo Raoth,) I beg to recommend that they each be sentenced to fourteen (14) years' imprisonment, with labor in irons in banishment, in another district.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The superintendent of Tributary Mehals first tried this case, under the provisions of Section III., Regulation V. of 1809. He convicted these prisoners and recommended that they should be imprisoned for life in transportation. The court deeming the trial to be null and void, as Regulation V. of 1809, had been repealed by Act I. of 1849, and the office of superintendent of Tributary

Mehals is not a court of competent criminal jurisdiction contemplated in the law, suggested to Government, that orders might be issued under, and in conformity with, the provisions of Section IV., Act I. of 1849, for a new trial. This trial has accordingly been held, under the sanction of Government, by the sessions judge.

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The sessions judge, in concurrence with the opinion of his law officer, convicts the prisoners on their own confessions before the darogah and the magistrate, and recommends that they be sentenced to fourteen (14) years' imprisonment, with irons, in banishment. The confessions have been proved to have been voluntarily made, and the allegations of the prisoners that they had been extorted from them by the darogah, are not supported by the evidence adduced. I concur in the conviction of the prisoners.

The prisoners admit that they went out armed to steal grain; that one of them, Gopee Day, was seized by the deceased in the act of robbing the granary; that they all went to his assistance; that Gopee Day was rescued and the deceased was killed by their leaders Lukhun Purrera and Pohul Swyn. They were all therefore present and partakers of the murder, and I think the measure of punishment proposed by the sessions judge is not commensurate with their criminality. They are all liable to a sentence of death, but as the leaders have escaped conviction, and the prisoners were only inferior actors, the ends of justice will be satisfied by a sentence of perpetual imprisonment on the latter. I do not see any ground for a more mitigated sentence.

The prisoners are accordingly sentenced to imprisonment for life, in transportation.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT AND SUMBOONATH CHUNG *versus* NUDDEE CHUNG (No. 2) AND SURROOP CHUNG (No. 3).

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Case of NUDDEE CHUNG and another.

1. Culpable homicide. The prisoners attracted in the middle of the night by their sister-in-law screaming, that a man was attempting to ravish her, went and caught him in her house, beat him there, and dragging him out, continued to beat him, thus causing his death. Held that the beating was continued longer than sufficient to prevent the rape, and therefore not justifiable, but that the circumstances greatly extenuated the act. Sentence reduced on appeal to six months' imprisonment, without irons.

2. Justifiable homicide. Beating a man caught in an attempt to ravish the prisoners' sister-in-law, for a longer continuance than is necessary to prevent the crime of rape, and the beating causing death. Held that the homicide is not justifiable.

CRIME CHARGED.—1st count, wilful murder ; 2nd count, aiding and abetting in the said crime ; and 3rd count, placing the person of the deceased Ram Soonder when he was in a dying state in a mustard field, with the intent of concealing the above crime.

CRIME ESTABLISHED.—Culpable homicide of the prosecutor's brother, Ram Soonder Chung.

Committing Officer, Mr. C. W. Mackillop, officiating magistrate of Dacca.

Tried before Mr. H. T. Raikes, officiating commissioner, with powers of sessions judge of Dacca, on the 29th December 1852.

Remarks by the officiating commissioner.—The prisoners give the following account of this case in their own confessions before the police and the magistrate. They say that they were awoke on the night in question by the outcries of their sister-in-law (whose husband was absent), to the effect that some one had got into her house, and was holding her down and going to ravish her ; that on entering her house they found some one, whom they dragged out, and began beating, one with a bamboo, and the other with his fists and hands, till the man fell down as if he were dead, and they discovered him to be the deceased, a near neighbour, and one with whom they were well acquainted ; that some of his relations were attracted by the noise and interfered, but were driven away, and they therefore took up the deceased themselves, and placed him in a neighbouring mustard field, from whence his brothers removed him to his house where they heard he died from the effects of the beating in the course of the same night. The prisoners' sister-in-law, in whose house the deceased was found, corroborated the account given by her husband's brothers of the occurrence, and denied having ever had any previous criminal connexion with the deceased, or having ever been solicited by him thereto, or to have known him when laid hold of in her house.

The brothers of the deceased deposed to hearing the cries and tumult created by the prisoners and their brother, and to having gone

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to his assistance, and seen the prisoner No. 3, strike their brother, the deceased, repeatedly with a heavy rule, and No. 2, with his fists and hands ; to having been assaulted and driven away by No. 3 ; and subsequently removing their brother from the mustard field to his own house, where he died in the course of an hour or two.

The surgeon who examined the body after death states that both legs were broken above the ankle, and two ribs on one side, and one on the other, fractured, one of them had penetrated and wounded the left lung ; sundry other bruises were visible on different parts of the person ; and he attributes his death to the shock sustained by the system from the infliction of so many and severe injuries at the same time. The legs he considers were in all probability fractured by a club, or some such weapon, and the other injuries either from some one stamping or jumping on the body of the deceased. The prisoners before this court gave a similar account to what they had stated in the foujdaree.

There seems no reason to doubt that the deceased was found by the prisoners in their sister-in-law's house in the middle of the night, but I cannot credit her statement that he was there without her knowledge or consent, in the absence of her husband. It is quite evident that the deceased offered little or no resistance, and from the state of the body, that the prisoners committed a most cruel and brutal assault on him, from the severity of which he died within a few hours. The *futwa* convicts the prisoners of culpable homicide ; and in this verdict I concur, and sentence them both to seven (7) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoners have appealed, urging, as they have done throughout, the plea of justification, on the ground of the deceased being caught by them in an attempt to ravish their sister-in-law. From the remarks of the officiating commissioner on this trial it appears that he credits the account given of the occurrence by the prisoners, but that he does not give credence to the statement of their sister-in-law that the deceased came into her house without her knowledge or consent, and therefore he sentences the prisoners severely, as for a culpable homicide with slight provocation. The commissioner's reasons for discrediting their sister-in-law, Heera, are not given, nor does he show any cause for supposing that the prisoners could have known that the deceased was in the house with consent, if he really were so.

In my view of the case, the evidence and all the probabilities are in favor of a belief in the truth of Heera's statement. Her account tallies with that of the prisoners ; it is corroborated by that of her mother-in-law. There is no other way of accounting for the prisoners' discovering the deceased in their sister-in-law's house, except that given by her, her mother-in-law and the prisoners, *viz.*, that she screamed out, and if he had gone with her consent she would not

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have screamed out. It is not probable that she would have made an assignment with a paramour in the same room with her mother-in-law. The deceased, who spoke to his own relations after the beating, did not say that he had gone by consent, but that he was passing over the prisoners' homestead, and was beat on that account. Why he should have been passing there at 2 o'clock in the morning, and how the prisoners detected him is wholly unexplained. This story cannot be believed ; if not conscious that he had given just cause of provocation he would most probably have stated truly what he had gone for. His own relations, who have given evidence, state that the prisoners had no cause of enmity against the deceased, that he had no intrigue with Heera and the only one questioned on the point, states that she is a chaste woman. If the prisoners had believed that the deceased was in the house with the consent of Heera, she would doubtless have come in for a share of beating, which she did not.

I am clearly of opinion that the prisoners are entitled to the benefit of their plea, if not to justify, certainly greatly to extenuate their acts. The beating was continued longer than sufficient to prevent the crime which the deceased was attempting to perpetrate, and therefore entire justification cannot be acceded, but great allowance should be made for the irritation which such an invasion of a person's house in the dead of the night and attempted violation of one of his near female connexions must excite in an ordinarily imperturbable person. A sentence of six (6) months' imprisonment, without labor, appears to be quite sufficient punishment for the homicide under such circumstances. The sentence is modified accordingly.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT AND DOORBEEJAY BHARTEE, DISCIPLE OF RAMDIAL BHARTEE *versus* RUGHOONATH TEWAREE.

HAZAREEBAUGH.

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The evidence for the prosecution outweighing that for the defence (*alibi*), the conviction and sentence were affirmed, but the latter was thought very light under the circumstances of the case.

CRIME CHARGED.—Wilful murder of Ramdial Bhartee.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Captain W. H. Oakes, Principal Assistant Agent to the Governor General, Lohardugga, Hazareebaugh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebaugh, on the 31st December 1852.

Remarks by the deputy commissioner.—The evidence for the prosecution in this case shows very distinctly, that on the afternoon of Friday the 8th October, the prisoner with a number of men came to cut a rice crop that had been sown by one Miterjeet Singh, and that the said Miterjeet Singh accompanied by one Ramdial Bhartee, and two other persons went to the field and made remonstrance; whereupon the prisoner struck the said Ramdial two blows with a club, and thereby fractured his skull, so that the brains came out, and he died on the spot. It appeared further that the field in question had been held of Miterjeet Singh by Doorbeejay Bhartee, the prosecutor in this case, and had been by him pledged for a consideration to Tribhoobun Tewaree, the father of the prisoner; but that, such pledge notwithstanding, the chief proprietor, Miterjeet Singh, had, in or about the month of February last, taken the land into his own possession, and had, in May or thereabouts, sown the crop which the prisoner and others cut as above stated. The prisoner in his defence pleaded an *alibi.* He had on Thursday, the 7th October, gone to Lohardugga, twelve miles distant, had remained there all the day of Friday, the 8th, and returned home on Saturday, the 9th October. To this defence many seemingly respectable witnesses have spoken in very certain and circumstantial terms. The jury, disregarding this defence, have found the prisoner "*guilty*" of culpable homicide. There are indeed many circumstances that cast a doubt on the defence. Information of the occurrence was conveyed to the darogah on the 9th, he came to the place of the murder on the 10th, and then reported that the prisoner and others were accused, exactly as above recited, but that he could not discover the cause of the dispute; and that the body of the deceased was already rotten. It is in evidence that the prisoner's house is within a mile of the place of the murder, and the prisoner had himself proved that he came home on Saturday the 9th; yet on the 11th, the darogah reported that the offender and witnesses had not

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yet been found, and on the 13th he reported that the offender had been taken up, but he did not mention the name of the person apprehended. Finally, on the 16th, he reported that the prisoner had established a clear *alibi;* that the witnesses for the prosecutor gave discordant evidence; that the prisoner had no concern with the field; that Ramdial had gone to cut the crop, and was killed, it does not appear how. It is to be remarked that the evidence of Miterjeet Singh was taken by the darogah on the 10th October. Miterjeet spoke as an eye-witness, and he named several other eye-witnesses, all residents of Moortoo village, at which village the darogah was present on the 10th, yet the report of the 11th says, witnesses are not forthcoming; and these witnesses were not examined till the 13th, on which day the prisoner was apprehended, and evidence for his defence taken. There are no discrepancies that merit notice in the evidence, even as taken by the darogah, for the prosecution; nevertheless the darogah has pronounced it discordant. I am on the whole satisfied that the evidence for the prosecution is true, and that the defence is wholly fictitious. The darogah has, I think, grossly abused the trust reposed in him. I concur in the verdict of the jury, and seeing that there was, on the part of the prisoner, no *malice prepense,* I sentenced him as shown.

Sentence passed by the lower court.—Two (2) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—Three eye-witnesses depose to seeing the prisoner strike the deceased on the head and kill him on the spot, fracturing his skull so that the brain protruded. I see no reason to suspect the truth of their statement. The evidence to the prisoner's *alibi* is not so satisfactory though well supported. I see no reason to interfere; and have only to observe that, two (2) years' imprisonment seems a very slight punishment for knocking out a man's brains, and killing him on the spot without provocation.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT AND RUGHOONATH SINGH

versus

GOUR DUTT HOLDAR (No. 3), BRIJONATH MITTER (No. 5. APPELLANT), KRISTO CHUNDER CHUCKERBUTTY (No. 6, APPELLANT), DHEERA DEETE (No. 7, APPELLANT), BAMAH DOME CHOWKEEDAR (No. 12), NEERUN SOW (No. 13,) DHUNKISTO SOW (No. 14), SREEDHUR SOW (No. 19, APPELLANT), GOPAL SOW (No. 20, APPELLANT) AND CHOTARAM SADHOO (No. 21, APPELLANT).

BEERBHOOM.

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Case of BRIJONATH MITTER, (appellant) and others.

In a case of dacoity, the prosecutor having given no reason for suspecting two prisoners, and not having named the property found in their possession when giving in his list, together with other suspicious circumstances, their conviction resting solely on the discovery of that property, and that of a third prisoner also resting on proof which the court deemed suspicious, quashed. Sentence on the other prisoners confirmed.

CRIME CHARGED.—1st count, Nos. 3, 5 to 7, 12 to 14 and 19 to 21, dacoity in the house of Rughoonath Singh, prosecutor, from whence property, valued at rupees 3,946-4-0 was plundered; 2nd count, Nos. 3 and 5 to 7, accomplices in the said dacoity; 3rd count, Nos. 3, 5 to 7, 13, 14, and 19 to 21, knowingly receiving property acquired by the said dacoity; and 4th count, Nos. 12 and 21, privity to the said dacoity.

CRIME ESTABLISHED.—Nos. 3, 5 and 7, dacoity in the house of the prosecutor; No. 12 accessary to the said crime before the fact; and Nos. 6, 13, 14, and 19 to 21, knowingly receiving property obtained by the said dacoity.

Committing Officer, Mr. R. Abercrombie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 20th December 1852.

Remarks by the officiating sessions judge.—The prosecutor's house was entered by a gang of, it is stated, fifty or sixty dacoits, on the night of the 26th Assin, or 10th October 1852, and property plundered to the value of rupees 3,946-4-0; some of the prisoners were apprehended in a very clever manner.

It appears that late in the evening of the 26th Assin a party were observed issuing from the village of Beetoora, which is three *coss* distant from the village of Hurreesarrah, where the prosecutor resides, in a way that, considering the number of dacoities that have occurred in the neighbourhood, roused the suspicions of the head men of the village, and they determined to ascertain who amongst the inhabitants were absent from their houses.

Five persons, *viz.*, Gour Dutt, Mudhoo Dome, Brijonath Mitter, (prisoners Nos. 3, 4 and 5) and Dwarka Dome and Mahomed Dome, were not to be found, and in the houses of each three people were appointed to watch till the absentees should return. Very early in the morning, that is, about four *ghurries* before dawn, the prisoner

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Gour Dutt returned home with a bundle of clothes, and was immediately laid hold of by the three watchers, witnesses Nos. 2, 3 and 4, when he acknowledged that he had been out on a dacoity expedition to the village of Hurreesarrah, and that the bundle contained his share of the plunder. The uproar which was raised on the capture of Gour Dutt appears to have put the prisoner Brijonath Mitter on his guard; for as he approached his house he caught sight of the party or watch, and forthwith took to his heels; he was hotly pursued, and in his flight was seen to throw away a piece of cloth, which was picked up and afterwards identified as the property of the prosecutor, but he contrived to effect his escape, and to elude the pursuit until later in the day. Hurreesarrah is under the jurisdiction of thanna Moulepur, Beetoora under that of Sooree. Information of the capture was immediately forwarded to the darogah of the latter, who repaired to the spot even before the occurrence of the dacoity was reported to him. Gour Dutt confessed to having committed the dacoity before the darogah on the 11th and before the magistrate on the 13th October. In this court he denied the charge, and disavowed his previous confessions, and stated that Sreeram Mundul, (witness No. 2,) and Mehal Mundul, (witness No. 4,) went to his house at midnight, dragged him outside, and, throwing a bundle at his feet, called out that he was a thief, and that then all the villagers began beating him; he added that Ram Lochun Ray and Sreeram Mundul gave him an assurance that if he repeated the same story he had told in the Mofussil before the magistrate he should be released. His witnesses state that he was a respectable man; but beyond this they do not exculpate him from the charge: indeed, one of them, Satoo Chuckerbutty, a plain-spoken old Brahmin, corroborates the account given in the case for the prosecution.

Brijonath Mitter (prisoner No. 5) has denied throughout; and in this court pleaded an *alibi*, which was not established by the two witnesses called by him. There can be no doubt that he was absent from home on the night of the occurrence, and he is named by Gour Dutt as being one of the gang. The evidence of Gopal Gope, Sreeram Gope and Madhub Chowkeedar, the three watchers, and of Deenoo Gope, prove to my satisfaction that he returned to his village in company with Gour Dutt, and that, finding the villagers on the alert, and his own house occupied by watchers, he ran off, and in his flight threw away a piece of cloth, which was identified as belonging to the prosecutor.

Kristo Chunder Chuckerbutty (prisoner No. 6) was apprehended on the 13th October, on the strength of the confession of prisoner No. 7, and confessed before the darogah on the same day to having joined in the dacoity; he also pointed out a silver anklet which he had received as his share of the booty concealed within a deserted house. In the magistrate's court he disavowed his Mofussil confession, and he did the same before me, stating that he did not point out or produce the silver anklet, but that Ram Coomar Chowkeedar dug it up.

He also pleaded an *alibi;* but the only witness he called knew nothing at all about him. 1853.

Dheera Deete (prisoner No. 7) was apprehended on the 13th October, confessed the same day before the darogah, and again on the 15th before the magistrate. He also produced a large brass *gurrah* from a tank, within the garden of which he is the *malee.* In his defence he disclaimed both confessions, and said he had been beaten by the darogah. He called four witnesses to prove that he did not go to the garden for three days; one of them is since dead, two are his near relatives, and the fourth knows nothing. There is no reason whatever to doubt his guilt.

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Bamah Dome Chowkeedar (prisoner No. 12) was seen under suspicious circumstances on the night in question by the witness No. 1, and when taken into custody, confessed before the darogah and afterwards before the magistrate, to what amounts to accessaryship before the fact. Both confessions are well attested; and I see no reason to discredit them. In this court he disavowed them both; and pleaded that he was on watch in his own village on the night in question. His witnesses depose to his having been there at about one and a half or two *puhurs* of the night, when the noise which generally succeeds a dacoity was audible in the direction of Hurreesarrah; but this was probably after the crime had been perpetrated, and just before the time they speak of he is proved to have been absent.

Neerun Sow and Dhunkisto Sow (prisoners, Nos. 13 and 14) were also cleverly taken. Dholegobind Chuckerbutty (witness No. 5) states, that about four *ghurries* of the night of the 19th or 20th Kartick, he was passing near the prisoners' house, when he saw them coming out with a bundle, and that directly they caught sight of him they hurried in again. He then went and called the witnesses Nos. 6, 7, 8, 9 and 10, to assist him in watching, as he suspected they were up to some evil. Very shortly after they espied prisoner No. 14 leaving the house with a bundle. After allowing him to go a short distance, they went up and stopt him, when prisoner No. 13 came to the rescue with a *lattee*, but thay managed to secure them both, with the articles numbered from 19 to 26, which were afterwards identified as the property of the prosecutor. Their defence in this court consisted of a simple denial, and they called no witnesses. Prisoner No. 14 stated his age to be five years; but he is evidently a youth sixteen or seventeen years old.

Sreedhur Sow and Gopal Sow (prisoners Nos. 19 and 20) were suspected by the prosecutors and taken into custody on the 5th November; and when their house was searched, property, consisting of pieces of cloth numbered from 29 to 35, was found, and immediately recognized by the prosecutor. The prisoners have denied all knowledge of the dacoity throughout, and in their defence have claimed the cloth as their own property; but Sreedhur Sow called

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no witnesses; and of the two witnesses called by Gopal Sow one was not forthcoming and the other could say nothing in favor of the prisoners.

Chotaram Sadhoo (prisoner No. 21) was arrested under the following circumstances:—He was seen by the witnesses Nos. 11, 12, 13, 14 and 15, walking towards his village with a large bundle, when, instead of following the path which would have led him close up to where some of the witnesses were standing, he quitted the regular beaten track and went across the *khets*, with the evident intention, as it seemed to them, of avoiding a meeting. They therefore went up and laid hold of him, when he acknowledged that he was in fault, and prayed them to let him go, and not disgrace him; but they carried him off to the village, and kept him in custody until the arrival of the darogah on the following day, when the articles of cloth marked from 36 to 43, were found in the bundle with which he was captured, and which were afterwards identified by the prosecutor. He was apprehended on the 11th November, and was examined by the magistrate on the 15th idem, when the answer he gave was tantamount to a confession of privity to the dacoity in the house of the prosecutor. In his defence he stated that he was on his way home from the town of Soore with some sweetmeats which he had purchased there, when he. was met by Thakoor Doss (witness No. 11) and four others, who threw a bundle down before him, taxed him with robbery, and beat him till he was insensible. He named six witnesses to speak in his favor, of whom one is dead, one knows nothing, and this is the only witness he originally called in his defence, three are the same as those called by prisoner No. 17 (released); and they with the sixth do not, by any means, disprove the satisfactory and respectable evidence given against him on the part of the prosecution.

On the grounds stated above, I convict Gour Dutt (prisoner No. 3), Brijonath Mitter (prisoner No. 5) and Dhera Deete (prisoner No. 7), of the crime of dacoity in the house of the prosecutor, and sentence them to ten (10) years' imprisonment, with labor in irons. Bamah Dome Chowkeedar (prisoner No. 12) of being an accessary to the above crime before the fact, and sentence him to eight (8) years' imprisonment; Kristo Chunder Chuckerbutty (prisoner No. 6), Neerun Sow (prisoner No. 13), Sreedhur Sow (prisoner No. 19), Gopal Sow (prisoner No. 20) and Chotaram Sadhoo, (prisoner No. 21), of knowingly receiving property obtained by dacoity, and sentence them each to seven (7) years' imprisonment, and I also convict Dhun Kisto Sow (prisoner No. 14) of the same crime, and, in consideration of his youth, sentence him to three (3) years' imprisonment, all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—Prisoners Nos. 5, 6, 7, 19, 20 and 21, have appealed. The proof against the three first is sufficient to sustain the convic-

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tion, and there is no reason to interfere with the sentence passed against them.

The case is otherwise as respects Nos. 19 and 20. The confessing prisoners had revealed the names of most of their accomplices early in October, and those of these prisoners did not occur. On 5th November, the prosecutor gave in a statement to the effect that he suspected eight or nine other persons, and recognized as his own, apparently every article that was found in their houses; subsequent to this he named four other persons as suspected by him, and amongst them one of the prisoners in question Sreedhur (No. 19.) In his house some new Markin cloths were found, and he declared these also to be his. Gopal lives in the same house.

On the proof of finding this property and of their belonging to prosecutor alone, rests the conviction of these prisoners. •I do not find any such cloth noted in the list of property stolen. The prosecutor has given no reason for suspecting them, nor indeed have his reasons been asked.

His claiming every article found as his own, and his witnesses supporting him in it, throw great suspicion on their testimony. I therefore think it proper to direct the release of these two prisoners.

The prisoner No. 21 was named by no one. He was not apprehended till the 11th November and he has throughout alleged the principal witness against him (Thakoor Doss) to be his enemy and to have maliciously conspired with the other witnesses, who pretend to have caught him with plundered property. His alleged confession of privity appears to me rather to have been an attempted retort against Thakoor Doss of the charge. After having stated that he was seized by Thakoor Doss and others and the cloths (which are of a common kind) thrown upon him, he was, for some reason not apparent, asked who committed the dacoity, when he answered, "On the day I was caught, Thakoor Doss said to Heera Dome and Dooma Dome if any one catches you, I will get you off. A day or two after the dacoity, Rajoo, Heera and others said to me we have committed the Hurreesarrah dacoity, do not tell any one. They got the cloths and put them upon me." Considering as I do that the evidence of the prosecutor and his witnesses as to the recognition of the property in this case is not to be relied on, and that there are indications of this occurrence having been turned by him and others to malicious purposes, I cannot confirm the sentence on this prisoner. He will also be released.

R. H. MYTTON, Esq., *Officiating Judge.*

BUKHTAR JEMADAR AND GOVERNMENT

versus

BANOO ALIAS BANASSUR DOOLEA (No. 2, APPELLANT), MODHOOSOODUN MOCHEE (No. 3,) AND NOBIN CHATTOPADHYA (No. 4, APPELLANT).

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Illegality in the arrest of a prisoner will not vitiate his conviction.

A prisoner sentenced to imprisonment for seven years' for dacoity on his own confessions. Sentence confirmed on appeal.

CRIME CHARGED.—Nos. 2 to 4, dacoity attended with wounding in the house of the prosecutor, on the night of the 25th of March 1852, and plundering therefrom property to the amount of rupees 1-8-0.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 18th September 1852.

Remarks by the sessions judge.—On the night of the 25th of March, a gang of dacoits attacked and robbed the house of one Metai Neogee, in the village of Mankund, and then attacked the house of his neighbour, Bukhtar Jemadar, who received a severe blow on his hand, from which it is still stiff, but he wounded some of the dacoits, owing to which they threw away the plunder which had been obtained in the house of Metai Neogee. Mankund is only half a *coss* from Chandernagore, where the prisoner No. 2, Banoo, lives; and a burkundauz there heard that he was wounded and had gone off: he followed him, and apprehended him on the 28th of March at Azapore, which is 14 or 15 *coss* off: he had a sword-cut behind his right shoulder, and made a confession, the next day, before the darogah at Mankund. It is worthy of remark that although he mentioned the names of many of the dacoits, not one of the other prisoners was among them. On the 30th of March he was sent off to the magistrate, and the same day he confessed that he was one of the dacoits. The prisoner No. 3, Modhoosoodun Mochee, had been apprehended on the 29th of March on another charge, and on the 1st of April was sent to the darogah, as it was suspected that he might have been engaged in this dacoity, as his house is at Chandernagore, and he confessed the same day before the darogah at Mankund that he was one of the dacoits, and the next day he confessed before the magistrate at Hooghly. As there is no evidence against the prisoners but their own confessions, they are entitled to the benefit of all the extenuating circumstances contained in them. The prisoner No. 4, Nobin Chattopadhya, lives at Jangong, in the thanna of Sulemabad, in the zillah of Burdwan. It appears by the records that on the 27th of March, Taruck Roy, a thanna peada, heard

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that one Sham Thakoor, of Chandernagore, had been wounded in the dacoity, and would be found at the house of Nepaul Dome in Calcutta; and accordingly a jemadar was sent to apprehend him, who, when he arrived there, found that the Calcutta police had, on some account, apprehended this prisoner at the house of Nepaul Dome, and as Sham Thakoor could not be found, he brought away this man, who confessed before the darogah at Mankund on the 2nd April, and before the magistrate on the 3rd of April. The prisoner stated in this confesion that he was apprehended in Calcutta on suspicion of having committed burglary.

Sentence passed by the lower court.—Each seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The prisoner Nobin Chattopadhya* has appealed, and his appeal has been conducted in this court by Mr. Norris.

He has submitted the following two points for consideration:

First.—Whether the arrest of the prisoner was not in violation of Clause 1, Section XXV. Regulation XX. of 1817?

Second.—Whether the evidence, on which the conviction is founded, is legally sufficient to sustain the finding?

As regards the first, even if the arrest were illegal, the prisoner is not now in custody under that arrest, but under a warrant of conviction by the sessions judge. If illegally arrested, a person may, until any step be taken to cure that defect and create legal ground for custody, claim to be released, but not afterwards. Illegality in the arrest will not vitiate the trial. The prisoner might complain, or have an action against the person who arrested him.

On the second point Mr. Norris urges that the prisoner was taken into custody by the police on the 28th March and did not confess until the 2nd April, and asks the court to presume unfair means to extort confession from the delay. It is by no means clear that the prisoner was taken into custody by the Mofussil police on the 28th March. His written defence on the trial states the date to be the 30th March. The calendar shows it to be the 1st of April. The magistrate of Hooghly's order under which his police came to Calcutta, is only dated the 28th March.

The prisoner was found in the house of a notorious leader of dacoits. His confessions bear upon their face the stamp of truth, giving as they do particulars, which could not, I think, have been invented, and they have been proved to have been voluntary. His name is

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* The appeal of another prisoner concerned in this case was disposed of by the court, Present: Mr. R. H. Mytton, on the 25th February, when the following remarks were recorded by him. "Banoo, *alias* Banassur Doolea, has also appealed, urging that he never made any confession, and that he received his wound by the fall of a honey-comb cutter's weapon falling from a tree upon him. The plea is clearly false. He made a detailed and circumstantial confession to the magistrate as well as to the darogah. There is no reason to interfere in his favor."

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not, it is true, mentioned in the other confessions, but in other particulars they tally very much with the prisoner's. The *alibi*, to prove that the prisoner was in Burdwan on the 25th March when he was apprehended in Calcutta on the 28th, is not worthy of any attention. The sentence is a very light one, and I see no reason to interfere in the prisoner's favor. The appeal is rejected.

PRESENT :

J. DUNBAR, ESQ., *Officiating Judge.*

MUSST. SHEOKOEREE AND GOVERNMENT

versus

MUSST. JHENJEA.

SARUN.

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Case of MUSST. JHENJEA.

The prisoner was found guilty of having used such violence towards a child that it died soon after. The evidence not being sufficient to prove that she did so with intent to kill the child, she was convicted of aggravated culpable homicide, and sentenced to imprisonment for ten years, with labor suitable to her sex.

CRIME CHARGED.—Wilful murder of Jhugroo Chokra.

Committing Officer, Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 24th January 1853.

Remarks by the sessions judge.—I refer this case, both because I dissent with the *futwa* of the law officer, which convicts the prisoner of culpable homicide only, and because I think it one which under all the facts, I am not competent to dispose of myself.

The facts are briefly as follows :—About noon on the 22nd December 1852, the prisoner, Musst. Jhenjea, desired the prosecutrix (who was living in the same house with her) to carry some food to her husband (brother to the latter) to the fields where he was at work ; whereupon the prosecutrix made over to her (Jhenjea) her infant boy, aged four months, and set off as directed. She was absent on this errand for a considerable time, and returning about 4 P. M., found the child in the prisoner's arms, but injured about the neck, which was swollen and scratched, and had apparently been squeezed, upon which she began to cry, when other persons came in, and though everything was done for its relief, the same evening, about 8 P. M., the child died.

Upon this the mother took the body to the thanna, accusing the prisoner of the murder ; and the latter, being apprehended, confessed to the darogah that she had squeezed its throat, and was to blame for it, but that it was her fate to destroy it. She was then sent in to the station, and to the assistant magistrate she again repeated this confession, admitting that when her sister had gone with food to her husband, and had left the child in her charge, she had, in consequence of disputes with its mother, given the child two slaps on the neck, and that a ring had scratched it, and that some watery blood had come from the wound. She admitted also that she had done it when three or four *ghurries* of the day were left (at that time of

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year about 4 P. M.); and she repeated that it was the child's fate to die by her hand.

The civil surgeon declares that the child's death was caused by pressure (strangulation) of some kind applied to the throat, and the other parties who came up on hearing her cries fully corroborate the prosecutrix's statement of their finding her crying with the child in her arms, injured about the neck, and breathing with difficulty. Other parties again (one of them being the prisoner's father-in-law) depose to the occurrence of frequent disputes between the two women, and to the prisoner's having threatened to kill the child if the mother did not leave the house and go away.

On her trial the prisoner denies having killed the child, and says that after the mother had gone off with her husband's dinner she also went to the river for water, and when she came back (at that time two and a half *ghurries* of the day were left), she found two wild cats (*kuttasses*) fighting close to the child, which was crying, and that when she took it up, and began to put on its clothes, the mother came and took it and began crying; that she said nothing of this at the time, as her father-in-law used to beat her when she had disputes with the prosecutrix, and she was afraid that he would have done so again, for her neglect in having left the child as she did.

She calls two witnesses to her defence, but they state nothing in her favor; and in truth have already given evidence in behalf of the prosecutrix and against her.

The moulvee, under the sanction of certain authorities in the Mahomedan law, convicts the prisoner of culpable homicide only; but I quite dissent from this finding, as I conceive the prisoner is either altogether innocent, or is guilty of the murder of the child: and I regret to say that I see no reason to doubt her guilt. There is ample proof that she had often disputes with the mother and threatened to kill the child; that the child was left in her care by the mother, and that when she came back she found it injured about the neck, and that, in consequence of these injuries, the child died. This again is corroborated and supported by the two confessions made by the prisoner, and though she now recants and denies having made them, she states nothing satisfactory as to the cause of the child's death; and the story of the wild cats is quite improbable, as under no circumstances could they have inflicted the injuries described by the medical officer. It is possible that the prisoner merely intended slightly to injure the child, and thereby induce her sister-in-law to go away with it, but she has never urged this plea herself; and even supposing it to be the case, it is clear that she caused its death, and is of course answerable for it. I cannot myself but deem her guilty of the murder, and under all the facts of the case recommend that she be imprisoned for life, with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —That the child died in consequence of violence used towards it by

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the prisoner is beyond question, and she is therefore answerable for its death. It is true, that in both the confessions, she said it was the child's fate to die by her hand, but this must be taken as referring to the fact that the child had died after she had maltreated it; and not as implying that the violence she used towards it, was done with the purpose of taking its life. Before the darogah, her confession does not go further than an admission, that she had squeezed the throat of the child, for which she was to blame. Before the magistrate, she acknowledged only having given it two slaps. Considering the ease with which she might have completed her purpose, had her intentions been to kill the child, I think it is but reasonable to presume that she meant nothing more than to do such hurt to the child as would seriously alarm the mother, and so compel her to quit the house, an object she is said to have long had at heart. The deposition of the medical officer shows that the congestion of the organs caused by the strangulation was greater than so young a child could bear. It is to be inferred from this that if the child had been older, or the strangulation somewhat less, death would probably not have ensued. The prisoner could not of course be aware of the exact degree of violence which she could use, without danger to life, and probably therefore injured the child to a greater extent than she contemplated. Giving her the benefit of the doubts which fairly arise in the case, as to the intent with which she committed the violence, which caused the death of the child, I convict her of aggravated culpable homicide, and sentence her to imprisonment for ten (10) years, with labor suitable to her sex.

PRESENT :

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT AND UDDARIKANTH SHAH

versus

CHOTOMONEE (No. 10) AND BURROMONEE (No. 11).

BACKERGUNGE.

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Case of CHOTOMONEE and another.

Appeal dismissed, the plea in support of it not being established.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, in which property of the value of rupees 245-6-9, was carried off ; 2nd count, receiving and retaining the said property knowing it to have been stolen.

CRIME ESTABLISHED.—Burglary in the house of Uddarikanth Shah, prosecutor, in which property of the value of rupees 245-6-9, was carried off, and receiving and retaining the said property knowing it to have been stolen.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, officiating sessions judge of Backergunge, on the 16th October 1852.

Remarks by the officiating sessions judge.—Prosecutor, Uddarikanth Shah, deposes, that on the night of the 31st Assar, he and his nephew, Govind Chunder, slept in the northern house of their *baree.* On getting up in the morning he saw that the string of the *jhamp* which closed the house was cut, and on looking about he discovered that a box, containing rupees and gold mohurs, and gold and silver ornaments, and certain other gold and silver ornaments, which had been in an earthen dish covered with a *tuslah,* had also been carried off. On this he called his neighbours, told them what had happened, and commenced endeavouring to find out who had robbed him. Finding that the prisoners Chotomonee and Burromonee, two brothers, who had been in the habit of coming regularly to prosecutor's shop previously for oil, salt, &c., ceased to come after the robbery, and seeing that they were spending more money than usual, he suspected that they were the thieves ; and giving information to the thanna darogah, he came to the spot, seized the prisoners, and searching their house, found in it a large quantity of the stolen property. The total amount stolen amounted to rupees 245-6-9, and of this there was found in the house of prisoners, in a *sooparee* garden, and under the roots of a bamboo tree, stolen property valued at rupees 189-9-18-3. Prosecutor's house is about twenty or twenty-five *beegahs* distant from that of prisoners'. Prosecutor recognizes and identifies all the property, from Nos. 1 to 36, and from Nos. 43 to 51, and from Nos. 56 to 58, consisting of gold and silver ornaments, brass dishes, &c., as either his own property, or as having been pledged with him

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by other parties. The money from Nos. 52 to 55 and 59, he claims upon the confession of the prisoners, who produced it, and said that they had stolen it from him.

The prisoner Chotomonee (No. 10) confessed at the thanna and before the magistrate that on a day in Sawun last, the 2nd or 3rd, he was looking for his cows, when he saw Khan Mahomed and Budye Aleemooddeen, Shumsher Khan, and his brother Burromonee (prisoner No. 11) concealing certain property, consisting of silver *karoos*, *hunslees*, &c., at the root of a bamboo tree, and that they told him not to tell any one, when he went home. When the darogah came he pointed out the place where the property was hidden. He cannot say whose the property is that was found in his and in his brother's house, only that it is not theirs.

The prisoner Burromonee (No. 11) confessed in the Mofussil that he went with others to rob the prosecutor; that he remained with another man in the boat, whilst the others entered the house and returned with a small box and *tuslah*, which they brought to his house, hid some of the articles at the root of a bamboo tree and others in his house, and then went away; that he pawned a gold mohur obtained in the above robbery with Kishwur Chunder Chuckerbutty for rupees 14-8-0, and gave up all the rest of the property to the darogah when he came to search his house. In the magistrate's court he denied all knowledge of the case.

Numerous witnesses depose to the fact of a burglary having been committed in the house of the prosecutor and recognized and identified the property produced by the prisoners as belonging to the prosecutor. Those who had property in pledge with prosecutor, have also recognized and identified the articles found on the prisoners as theirs; and these facts, coupled with the thanna and sudder confessions of the prisoners, and the finding of the gold mohur prisoner No. 11 pawned with Kishwur Chunder Chuckerbutty, leave no doubt of their guilt. The jury considered both the counts entered in the calendar as proved on violent probability; and concurring in that verdict, I sentenced the prisoners.

They have never been previously punished, and appear to have borne fair characters hitherto.

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners have appealed. They urge that the prosecutor bore them enmity and buried the stolen property in their premises in order to ruin them. This is an unsupported assertion. The guilt of the prisoners is established on strong presumptive evidence and I see no reason to interfere in the conviction and sentence.

PRESENT :

A. J. M. MILLS, AND R H MYTTON, } ESQRS., *Officiating Judges.*

GOVERNMENT AND DUNNURDUN PUTNAIK

versus

MUSST. GOLAB DEY (No. 1), MUSST. BISHNOO DEY (No. 2), MUSST. RADHIKA DEY (No. 3), MUSST. KYNTEE (No. 4) AND MUSST. BYE DEY (No 5).

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Murder of a child for the sake of its ornaments. Sentence on the principals, death; on an accomplice, imprisonment for life; and on an accessary after the fact and possessor of the stolen property, and on one privy to the murder, fourteen years' imprisonment.

CRIME CHARGED.—1st count, Nos. 1 to 5, wilful murder of Musst. Mahadey, *alias* Madhoee, a child aged about seven years, for the sake of her personal ornaments; 2nd count, Nos. 1 to 4, aiding and abetting and being accessary before and after the fact to the murder of Musst. Mahadey, *alias* Madhoee, aforesaid, for the sake of her personal ornaments; and 3rd count, Nos. 1 to 5, having knowingly received certain articles of stolen property acquired by the murder of Musst. Mahadey, *alias* Madhoee, aforesaid.

Committing Officer, Mr. W. J. Allen, magistrate of Balasore, Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 22nd December 1852.

Remarks by the sessions judge.—The particulars of the case are as follows :—

On the 27th of August 1852, Beenud Putnaik reported at the Moeshpore thanna, that his daughter Mahadey, *alias* Madhoee, aged about seven years, had been missing since the previous evening (Thursday), and that having searched everywhere without finding any trace of her, he supposed she might have fallen into some tank. but he did not suspect any person of having killed her, as she had no enemies, and she had no other ornaments on her person except a gold *nuth* and some *choorees* or bracelets made of lac. However, as the search was proceeding, Mohun Chand Mainty, the father-in-law of the deceased, is said to have got some private information that Madhoee had been killed by her neighbours, who had buried her body; and having communicated the same to Beenud Putnaik, he caused the tanks, gardens and houses, of the different villagers to be searched by Kadir Khan, burkundauz, and others, in the presence of his nephew, Dunnurdun Patnaik, who was afterwards admitted as prosecutor in the case, in consequence of the bodily infirmity of Beenud Putnaik, and at about 11 A. M., on the 5th September, after having searched several houses, they were proceeding to the house of Koonwar Narain Putnaik, who had brought a light to show them his house, when his wife Golab Dey (the prisoner No. 1) met him at his door and whispered something to him, and on pretence of

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going to fetch a *gumcha* from the house of Humarain Putnaik to put on his body, he made his escape, and was not afterwards to be found, and this circumstance having created great suspicion in the mind of the burkundauz, he, with Burrum Mainty, paik, and Seetoo Purera chowkeedar (witnesses Nos. 2 and 3) went into the house, and saw a quantity of ants travelling in and out of a hole in a recently made *tengrah* (or earthen mound used for placing cooking utensils on), and likewise perceived a strong stench, which greatly increased when witness No. 3 poked a stick into the hole, and the burkundauz then caused the *tengrah* to be dug open with a *khodal* in the presence of several persons, and there discovered the body of the deceased. The burkundauz then apprehended Golab Dey (the prisoner No. 1), who stated that she alone had not killed the deceased, but had been aided by the prisoners Nos. 2 to 5; and they, after being apprehended, with the exception of Bye Dey (No. 5) also confessed, and on the burkundauzes asking what had become of the deceased's ornaments, Golab Dey said they were in Bye Dey's house, and the latter then took the key of her house from her waist, and gave it to her husband, Hurnarain Putnaik, who opened the door, and Golab Dey and Bye Dey entered it, and after conversing together, the former, at the indication of the latter, brought out the ornaments Nos. 1 to 9 from the *tâk*, or small niche in the wall, and delivered them to the burkundauz, who sent information to the thanna, and the mohurir and jemadar came and examined the body, which on arrival of the darogah, who was engaged investigating some other case when intelligence of the above was communicated at the thanna, was forwarded to the sudder station.

The above facts are all fully established in evidence, and Beenud Putnaik, the father of the deceased, in his deposition recorded before the police on the 6th September after the body was found, in explanation of his previous statement, to the effect that his daughter had no ornaments on her person except a gold *nuth* and some lac bracelets, stated that he was absent from home at the time she left the house, and he mentioned those things only which she was in the habit of wearing.

The following is the purport of the confessions of the different prisoners recorded before the magistrate.

Confession of Golab Dey (prisoner No. 1), on the 10th September 1852.—"On Thursday, in the month of Bhadoon, I don't recollect the date, towards evening, I was sitting at the house of Chaitun Baboo, when Bishnoo Priya, the wife of my husband's elder brother, called me to the house of Bye Dey, the wife of my husband's second brother, where I saw that previous to my arrival Bishnoo Priya and Bye Dey, had stripped the deceased of her ornaments, and placed them in a bag in the *tâk* or niche in the wall in Bye Dey's house, and had twisted the deceased's cloth round her mouth, and tied her hands behind her; and they then tied a string

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round her pulse at the wrist, and told me to come and kill her, and they would divide her ornaments. On hearing this I objected and was running away, when the said two persons seized hold of my clothes and pulled me into the house, where they told me to lay hold of deceased's hand, and I with my right hand laid hold of the left hand of the deceased, while I held my infant in my left, and Bishnoo Priya sat on the deceased's chest, while Bye Dey squeezed her throat with both her hands, and she groaned and died. We then placed her in the house and closed the door; and in the evening, when the deceased's family asked me concerning the deceased, I denied having seen her, and at about 9 o'clock at night, the two wives of my brothers-in-law took the deceased's body to my house, saying that as it was a separate or single house, they would bury it there, and no one would be aware of it; and on my remonstrating, and asking where I should sleep and eat, as I had but one house, the said two persons said that if I would give the rice, they would cook for me, and I should at night sleep in their houses. Bye Dey then brought a *khodal* from her house, and dug a hole at the place where I kept my *handees* and buried the body, and placed my *handees* over the spot, and I locked the door, and cooked and eat at the houses of the abovementioned persons, and slept at night in the house of Chaitun Baboo, my brother-in-law. On Saturday, ten days afterwards, my husband, Koonwur Narain, came home from Balasore, and after eating slept in the house, but I mentioned nothing about what had taken place to him; and the next day, Sunday, about one *puhur*, or 9 o'clock, the phandee burkundauz and others came to my house and told me to lift the *handees* from the *tengrah*, but I was afraid to do so, and they dug up the place and found the body, and on being questioned, I stated the above particulars, and afterwards produced the ornaments from the *tâk* or niche in the wall of Bye Dey's house, &c."

And in reply to the magistrate's question, she said that no one but herself, Bye Dey and Bishnoo Priya, killed the deceased, but that the female Kyntee saw Bye Dey take the deceased to Bye Dey's house.

Confession of Bishnoo Dey (prisoner No. 2), recorded the 10th September 1852.—" About ten or fifteen days ago, on a Thursday, in the month of Bhadoon, between 4 and 5 o'clock P. M., the deceased was playing with Hurrychurn Putnaik's daughter's son, about two and a half years of age, when Golab Dey and Bye Dey called the deceased to come to them, and then pulled her past my house to Bye Dey's, and told me to lay hold of her while they took off her ornaments, and threatened that if I did not go, they would kill my son; and I, through fear, went, and Chaitun Churn Putnaik's mother, Radhika, went to and fro and kept watch, and they took the deceased into Bye Dey's house, where they took her *sarree* and twisted it round her mouth, tied her hands behind her, and laid her down with her face

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towards the ground, when I stood on her feet or legs, while Bye Dey sat on her waist, and Radhika on her neck, and Golab Dey pinched her throat and killed her; and after she was dead, Golab Dey and Bye Dey stripped her body of her ornaments, and put them into a bag, which they placed in the niche in the wall of Bye Dey's house, and told me that if I told any one what had happened, they would kill my sons. They then left the deceased's body in Bye Dye's house, the door of which they tied with a string, and we four persons went to Chaitun Churn Putnaik's house, and at three *ghurries*, or between 8 or 9 o'clock at night, when the deceased's mother and Musst. Kyntee and others came in search of her, and asked us four persons concerning her, we said she had been playing there, but had gone to her own house, and they went away. After which we four took the body from Bye Dey's house to that of Golab Dey and buried it, and then made a *tengrah* over it, on which we placed cooking utensils. Then I and Bye Dey and Radhika went to deceased's mother, who was crying, and on her asking us what had become of her daughter after she went to our house, Bye Dey and Radhika told her she had fallen inte some *gudira*, or pond, and been drowned, and told her to desist from crying; that if she did not, her son would be arrested and bound, on which she fainted away, and after giving her water to restore her, we went home, &c."

And in reply to the magistrate's questions, she stated that twenty days before the occurrence "I and Chaitun Putnaik and his mother Radhika Dey, and Bye Dey and Golab Dey consulted to kill the deceased and take her ornaments; no one besides us (*viz.*, those named in her confession) killed the deceased." But she stated that Sumitra Dey kept watch in the middle court-yard, but did not go to the place where she was killed.

Confession of Radhikâ Dey (prisoner No. 3), recorded on the 11th September 1852.—" I did not kill the prosecutor's daughter in company with the other prisoners, nor steal any ornaments from her person. In Bhadoon last, about seventeen days since, on a Thursday night, deceased's mother came to my house and asked if her daughter had come there, to which I replied she had come there with her, when I went to tie up my cows, and where she went I knew not. Her mother then went in search of her, crying, and I accompanied her to her house, and then returned to my own, and lighted the lamp at my *thakoor baree* and went, at one *ghurrie* of the night, to Bye Dey's house, where Bye Dey, Golab Dey and Bishnoo Dey were sitting; and on my asking them where prosecutor's daughter Mahadey, who was missing, had gone, they told me that they had killed her and taken her ornaments. On hearing this, I told them that I was going to inform the deceased's mother, and they laid hold of me by the feet and entreated me not to tell her or any one else. Bye Dey then lighted a lamp, and showed me the body lying in her house, and I asked her why she had killed the child;

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when I was called by the *poojarry* of the *thakoor* to give *ghee* for the *thakoor*, and I went home. At three *ghurries* of the night I again went to Golab Dey's house, where I saw Golab Dey, Bye Dey, and Bishnoo Dey; and Golab Dey called me into the house and pointed out the *tengrah*, saying they three had buried the body there, and placed the cooking utensils over it. I then got some salt from Golab Dey and went to my own house. And the prosecutor, who was at Narra Mouzah, having heard of the matter, came home and searched everywhere for his daughter, and not finding her, gave information to the police. After which several houses were searched, and in that of Golab Dey the body of the deceased was found in the *tengrah*, &c."

And on being further questioned by the magistrate, she denied that she consulted with others twenty days previously to kill the deceased, as stated by Bishnoo Priya.

Confession of Kyntee (prisoner No. 4), recorded on the 11*th September* 1852.—"I did not kill the prosecutor's daughter, Mahadey, nor steal her ornaments. But about seventeen days ago, in the month of Bhadoon, on Thursday evening, I went to Bey Dey's house, where I saw Golab Dey, Bye Dey, Bishnoo Dey and Radhika Dey, and the deceased was inside the house, the door of which was closed to or ajar; and on their asking me where I was going, I said I was merely taking a stroll, and I sat down in Bye Dey's veranda, when Bye Dey, Golab Dey and Bishnoo Dey told me that they had placed the prosecutor's daughter Mahadey inside the house, and were going to kill her and take her ornaments, and told me to join with them in doing so, but I refused, saying no one could kill a cat in these days, how would they kill a human being? They then told me not to mention it to any one, and they would give me a rupee, I was only to keep watch at the door, and they would kill her. I then stood at the sudder door, Radhika at the mofussil door; and one *dund*, or about twenty minutes afterwards, the three came out of the house and said that they had killed Mahadey. I then went inside and blew a light to a grass brand, and saw her lying dead, with a cloth around her face; and there were only some shell and brass *cutrees* on her arms. Golab Dey said, she had taken various gold and silver ornaments (detailed by the prisoner), and Chaitun Putnaik would sell them and give me one rupee, and at one *ghurrie* of the night the three *jas (i. e.,* the wives of the three brothers,) took the deceased's body to Golab Dey's house, where Bye Dey dug a hole with a *khodal*, which she brought from her house, and buried the body, and made a *tengrah* over it, on which they placed some cooking utensils. I and Radhika stood at the door while this was going on, and they afterwards came out and locked the door, and Bye Dey said she had placed the ornaments in her house. I then went to my house, and at about three *ghurries* of the night the deceased's brother came and inquired after Mahadey, and I said I had not seen her, and five or seven days afterwards the burkundauz discovered the body &c."

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And in reply to a question put to her by the magistrate she said, that two days prior to the occurrence, Bye Dey informed her that there had been two or three consultations about killing the deceased.

The Mofussil confessions of the said prisoners are, as respects all essential points, to the same effect as those above recorded.

Bye Dey (prisoner No. 5), in her examination recorded before the magistrate on the 13th September stated as follows:—"I did not with the other prisoners kill Mahadey, or steal any of her ornaments. If Golab Dey, Bishnoo Dey and Radhika Dey say I did, I am helpless. A little after 4 P. M., on the day of the occurrence, I went to pound or husk *dhan* at Jutta Putnaik's house, and returned home between 7 and 8 P. M., and I know nothing about the case. I did not place the property in my house. Golab Dey is in the habit of going to my house; she may have placed it there and charged me with doing so. I have no witnesses to adduce in my defence." And on being shown the deceased's ornaments numbered 1 to 9, she said that they belonged to or were worn by the deceased, but she did not know to whom the bags in which they were belonged.

And on being further questioned on the 17th November, she denied having given the key of her house to her husband to open the door, or having gone into it with Golab Dey, and produced the ornaments. This prisoner in like manner denied in the Mofussil.

The following is the purport of the examination of Golab Dey (prisoner No. 1) before this court:—"I did not kill Mahadey. I only saw her body. When I arrived, Bye Dey and Bishnoo Dey had twisted Mahadey's cloth round her mouth, and were holding her. On my arrival the door of the house was closed, and when I opened it, Mahadey was dead, and they took me by the hand and entreated me not to tell any one; and I told no one but Dunnurdun Putnaik, who caused me to be apprehended, but I did not assist in any way either before or after the occurrence; neither did I keep the deceased's ornaments."

And when questioned if she had anything to urge in her defence, she stated that Kadir Khan, burkundauz, beat her and told her to say that the body was found in her house, and that she was tutored by the persons in whose charge she was forwarded to the magistrate to say the same before him; and was told that if she did so, she would be released.

This prisoner cited no witnesses in her defence.

Bishnoo Dey, (prisoner No. 2,) pleaded "*not guilty*" to both the charges preferred against her, and stated that Kadir Khan burkundauz, and others tutored her and beat her, and told her to state as they dictated to her, and she would be made witness, and be rewarded. She also said that Dunnurdun Putnaik, the prosecutor, promised to support her children, and that as a quarrel existed between her and Koonwur Narain Putnaik and Hurnarain Putnaik (brothers of her husband) about her share of the family *talook*, and that both they and their wives bore her enmity; and as she and they

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did not speak to one another, it was not probable she would join with them in killing the child. But she had no witness.

Radhika Dey (prisoner No. 3) pleaded "*not guilty*" to the charges preferred against her, and stated that she was at the deceased's house from 4 P. M. till evening on the day of the occurrence, and that when the deceased's mother came to her house and inquired after her daughter, and told her that she was missing, she accompanied her to search for Mahadey; and after the body was found, but where it was found she did not know, she and her son Chaitun Pershad Baboo were arrested and beat, and she was told that if she said she saw the deceased's body in Hurry Baboo's (the husband of Bye Dey) and Golab Dey's houses, she would be released; but she told the darogah and jemadar that she knew nothing, and they wrote something according to their pleasure and forwarded her to the magistrate; and cajoled her, saying she was their *dhurm betee*, and that she would be admitted as witness. She stated however that she had no witnesses to her having been beat or tutored.

This prisoner cited the procecutor's mother, wife, and cousin to the fact of her having been at the deceased's house on the evening of the occurrence; but with reference to her foujdaree confession, their attendance was not enforced, as it is to be inferred she merely named them to harass them. The other witnesses, Nos. 25, 26 and 27, whom she cited to give evidence to the same effect, denied all knowledge of her having been at the deceased's house.

Kyntee (prisoner No. 4) also pleaded "*not guilty*" to the charges preferred against her, and stated, that after the body of the deceased was discovered, she was apprehended and taken to the prosecutor's house, where she denied knowing anything about her death, and after the arrival of the darogah she was tutored by the prosecutor and Kadir Khan, burkundauz, to say that while Golab Dey and Bye Dey were killing her, she stood at the sudder door of the house; and was told that if she did so, she would be admitted as witness, and that if she stated otherwise, it would go hard with her, and they wrote something unknown to her and forwarded her to the magistrate. This prisoner cited two witnesses, Nos. 28 and 29, to her having been beat, and to her having been at her own house at or about the time of the occurrence, but neither of them stated anything in her favor, though the latter is the mother of the prisoner.

Bye Dey (prisoner No. 5) pleaded "*not guilty*" to the charges preferred against her, in like manner as she had previously done before the police and the foujdaree court, and she repeated her previous statement, to the effect that she was engaged husking *dhan* at the house of Juttee Baboo at or about the time of the occurrence; and she further stated that on hearing, after her return home, that the deceased was missing, she went to the prosecutor's house and remained there, taking care of Mahadey's mother, till about 9 P. M. This prisoner cited witnesses Nos. 25, 26 and 27 to prove that she

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was at the prosecutor's house from evening time till 9 P. M., but they did not corroborate her statement.

She also named the prosecutor's wife, mother and cousin; but as in the case of the other prisoner (Radhika Dey) they were not summoned,

The *futwa* of the law officer states, that it is apparent or to be inferred (مستنبط) from the Mofussil and foujdaree confessions of the prisoners Nos. 1, 2, 3 and 4, the confession of the prisoner No. 1, before this court, and the finding of the body of the deceased in her house, the production of the ornaments of the deceased from the house of the prisoner No. 5, and the general circumstances of the case, that the prisoners Nos. 1, 2 and 5 killed the deceased by throttling her, while the prisoner No. 4 kept watch at the door of the house; and that No. 3, who became acquainted with the murder on the day of its occurrence, concealed her knowledge of it till after the body was discovered. But as the prisoners Nos. 1 and 2 deny having throttled the deceased with their own hands, and the prisoner No. 5 denies all participation in it, the fact of any one of them having individually murdered the deceased is not legally established against any of the prisoners, but the crime of being accomplices in the murder is proved against Golab Dey (No. 1) and Bishnoo Dey (No. 2); that of privity to the murder after its occurrence against Radhika Dey (No. 3); privity both before and after the fact against Kyntee (No. 4); and that of keeping in her possession the property of the deceased knowing it to have been acquired by murder, against Bye Dey (No. 4); and declares them all liable to punishment by *akoobut.*

And on the grounds specified in the *futwa* I consider the crime of being principals in the wilful murder of Mahadey to be fully established against the prisoners Golab Dey (No. 1) and Bishnoo Dey (No. 2); that of privity to the said murder against Radhika Dey (No. 3); that of being an accomplice in the said murder against Kyntee (No. 4); and that of being accessary after the fact, and receiving the property acquired by the murder against Bye Dey (No. 5); and seeing no extenuating circumstances in their favor, I would recommend that Golab Dey and Bishnoo Dey (the prisoners Nos. 1 and 2) be sentenced capitally; Kyntee (No. 4) to imprisonment for life; and Radhika Dey and Bye Dey (Nos. 3 and 5) to imprisonment, with labor, for fourteen (14) years each. The prisoner Bye Dey, judging from the confessions of the other prisoners, would appear to have been a principal in the murder; but the record affords no legal proof of the fact; and in recommending her to be imprisoned as above, I have been guided by the evidence adduced against her.

Remarks by the Nizamut Adawlut.—(Present: Messrs. A. J. M. Mills and R. H. Mytton.)—MR. A. J. M. MILLS.—I concur in the conviction of the prisoners. There is clear and well-established proof that the deceased was missing from about 5 P. M., on

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Thursday the 13th of Bhadoon; that the fact of her being missing was duly reported the next day to the police; that much search was made for her in the *jungles* and tanks; that the police burkundauz then proceeded to search the houses of the neighbours; that on making inquiries at the house of Koonwur Narain Putnaik, the husband of the prisoner No. 1, the prisoner No. 1 whispered something to her husband, who in the dark decamped; that she was seized and showed signs of great agitation and wept; that a stench of putrid matter was perceptible in the house; that the *tengrah* was opened, and the body of the deceased, which had been buried under it, was discovered. It is further in evidence that the prisoner No. 1, then and there confessed, implicating the other prisoners; that they were immediately seized, and, with the exception of the prisoner No. 5, made verbal admissions of their complicity in the murder; that the police burkundauz then demanded the ornaments worn by the deceased; that Golab Dey stated that they were with the prisoner No. 5; that Golab Dey and prisoner No. 5 entered the house of the latter together; that the former, at the indication of the latter, produced the ornaments from a niche in the wall of the house; and lastly that these ornaments were on the deceased's person when she was missing, and belonged to the prosecutor. The confession of the prisoner No. 1 was reduced to writing the next day; but there was some delay in taking those of the other prisoners which is not explained. The prisoners Nos. 1, 2, 3 and 4, however, confessed before the magistrate, and they are too particular and the circumstances related too probable to doubt their truthfulness. The prisoners Golab Dey (No. 1) and Bishnoo Dey (No. 2,) admit that they took a part in the murder of the poor child, and seeing no grounds upon which I should be justified in remitting the extreme penalty of the law in their favor, guilty as they are of a most cruel and premeditated murder, which calls for exemplary punishment, I would sentence them capitally.

The prisoner Kyntee admits that she kept watch at the door, while the child was being murdered. I would convict her of being an accomplice in the crime, and sentence her to imprisonment for life in the zillah jail, transportation not being a fit punishment for females.

The prisoner Radhika Dey acknowledges that she was privy to the murder and saw the body. Though there is no proof that the prisoner Bye Dey took any steps to promote the accomplishment of the murder, yet her subsequent guilty possession of the stolen property is clearly proved. I would sentence these two prisoners, as recommended by the sessions judge, to fourteen (14) years' imprisonment.

Mr. R. H. Mytton.—I concur in the finding of the sessions judge, and in the sentence proposed by him and approved of by Mr. Mills.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND RAMGOBIND SHAH

versus

SHEIKH ROKUNUDDEEN (No. 11), SHEIKH BHAGAEE (No. 12), SHEIKH AMEER (No. 13), SHEIKH NAZIR MAHOMED (No. 14) AND SHEIKH AREEF (No. 15).

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The *futwa* of the zillah law officer found the prisoner guilty of culpable homicide. The Nizamut Adawlut concurred with the sessions court, in convicting them of assault only. Sentence, a fine of rupees twenty each; in failure of payment, six months' imprisonment.

CRIME CHARGED.—Assault.

Committing Officer, Mr. C. W. Mackillop, officiating magistrate of Dacca.

Tried before Mr. H. T. Raikes, officiating commissioner, with powers of sessions judge, Dacca, on the 29th January 1853.

Remarks by the officiating commissioner.—From the confessions of the prisoners, and the evidence of eye-witnesses, which corroborated the former in all essential parts, it appeared that the deceased had visited the witness Roopa, with whom he was intimate, on the night in question, during the absence of her husband, and was observed by the prisoner No. 12 to enter the house. It does not appear that the prisoner recognized the deceased at that time, but went and told the other prisoners that some *loochcha* had gone to Dhukaye's wife in his absence, and was then in his house. The five prisoners then went there, and entering the house brought out the deceased, and after beating him with their fists and elbows gave him over to the chowkeedar, who took him to his (deceased's) house. He was very ill the next day, and died on the following day.

The surgeon who examined the body stated it exhibited outward marks of bruises and excoriations of the skin, but that there was evidence of severe and dangerous disease internally, and that the man had died of ruptured intestines, the consequence of dysentery. He also stated to the magistrate that the rupture alluded to might have been caused by the beating he had received.

The prisoners pleaded "*not guilty*" in this court to assaulting the deceased, but admitted having found him in the woman's house, and having handed him over to the chowkeedar. The civil surgeon who had conducted the *post mortem* examination of the deceased, in his examination before me, qualified the opinion he had given before the magistrate relative to the possibility of the ruptured intestines having been the consequence of the beating, by distinctly stating his belief to be that the deceased had died of dysentery, and that the disease was so far advanced that, independent of the beating, the man's death was inevitable at the time he was assaulted.

The moulvee returned a *futwa* of culpable homicide; but with reference to the opinion of the civil surgeon, I cannot concur in this

finding, as there seems to me no ground for believing the deceased came to his death from the injuries inflicted by the prisoners. I would convict them of assault only, and sentence them to six (6) months' imprisonment.

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Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The moulvee in his *futwa* calls the opinion given by the medical officer conjectural. I can find no sufficient reason for his thus characterizing it. The medical officer has distinctly said that the beating could have done no more than accelerate death, which must, under any circumstances, have shortly resulted, from severe internal disease. Had the prisoners been relations of the absent husband, I should have held them entitled to acquittal; but as they admit that they are not related to him, their honor was not touched by the visit of the deceased to Dhukaye's wife, and they cannot be held to have been justified in handling the deceased so severely. I concur with the officiating commissioner, and convicting the prisoners of assault, sentence them each to pay a fine of rupees twenty (20), and in failure of payment to six (6) months' imprisonment, to be calculated from the date of their being put in jail by the magistrate.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

MUSST. ASROBEE BEWAH AND GOVERNMENT

versus

SHEIKH DOONDEEAH (No. 7) AND SHEIKH WUZEER (No. 8).

MYMENSING.

1853.

February 25.

Case of SHEIKH DOONDEEAH and another.

The deceased having used offensive language to the prisoners, the sentence passed on them by the sessions judge, was reduced by the Nizamut Adawlut in appeal.

CRIME CHARGED.—Wilful murder of Eedla Fuqeer.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 5th January 1853.

Remarks by the officiating sessions judge.—The prosecutrix, who is the sister of the prisoners and wife of the deceased, states that on the day of occurrence a quarrel took place between the prisoners and the deceased regarding the former's cattle generally destroying his field, and the deceased having called them *koloo* (a term of reproach), the prisoner No. 7 assaulted him with his fists, caught him by the throat, knocked him down and struck him with blows of the hand and a *lattee*, which he snatched from deceased's hand; that prisoner No. 8, who was near, also came up and assisted his brother in assaulting the deceased; that on prosecutrix and her son calling out *dohaie*, they pushed the deceased, who was lying on the ground, with the *lattee*, towards a *bygun* field near the house, and after again assault-

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ing him, left him there on the ground and went away; that the prosecutrix then went to him and saw that life was extinct, when she immediately ran to the village to give the alarm, and when she returned she found her husband's corpse lying at the house, where she supposed it was taken by prisoner No. 7.

Witness No. 1, Keenah Chowkeedar, supported the prosecutrix's account of the affair in all its essential parts, saying he came to the deceased's house on the morning in question to smoke tobacco and witnessed the assault; that on witness's taking the deceased's part in the quarrel, prisoner No. 7 attempted to strike him, and when he moved off he began to assault deceased, at first with his fists and then with the *lattee,* which he snatched from deceased's son, who came up with it to his father's assistance; that prisoner No. 8 also assisted his brother, and when they had pushed him on towards the *bygun* field, witness went away to his own house, and related the affair to prisoner's brother, Ameer, whom he met on the way. This witness adds that when deceased called them *koloo,* they were so incensed that they said they would kill him.

Witness No. 2 also witnessed the assault on the deceased, in which both the prisoners took an active part, at some distance from deceased's house, where he had gone to cut grass, but near enough to see everything. This witness adds that when prosecutrix went to the village to report the murder to the villagers, No. 7 returned back and dragged the corpse and left it at deceased's house. The reason for this assault, he heard from prosecutrix, was owing to deceased's calling them *koloo.*

The other witnesses (Nos. 3, 4 and 5) immediately on hearing of the murder came up and found the corpse of the deceased lying in his house. The body was sent in to the station for examination by the civil surgeon, who deposed before me on oath, that he found death was caused by rupture of the spleen, which was diseased and enlarged, and therefore easily ruptured by a blow on the left side; that a blow with a hard instrument, or even a severe blow on the head or foot on the left side, would have been sufficient to cause such a rupture in that diseased state; that the rupture of the spleen alone was the immediate cause of death; that the lungs and liver showed marks of long-standing disease; that there was an old sore on the left leg, but these were not sufficient to cause death; that the left side of the back as well as the front part of the head were also severely bruised, and these injuries must have been caused by blows with an instrument such as the *lattee* shown to him. The *lattee* was eleven and a half *chittacks* in weight, three and a half cubits long, and two inches in circumference.

The prisoner No. 7 at the thanna does not deny assaulting the deceased, but gives a different version of the manner in which the quarrel arose and terminated, *viz.,* that he first quarrelled with Keenah

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(witness No. 1) and then with the deceased regarding the price of some cows, for which prisoner says he stood security for him, and that deceased's death was caused by the beating, both from himself and deceased's son, who beat them both with the *lattee*, and that his brother No. 8 only separated the parties. He repeated this confession before the magistrate, with this variation, that he could not say whether deceased died from his beating or that of his son, and that he (prisoner) had no intention of killing deceased. In the sessions court, he acknowledged both the above confessions, adding that himself, deceased and Keenah, wrestled with each other, and that prosecutrix and her son beat them both with a *lattee*. This prisoner named witnesses to his defence, but declined to examine them.

Prisoner No. 8 denied assaulting the deceased, urging that the only part he took in the matter was to separate the parties, and named witnesses who, however, denied all knowledge of the affair. The jury declared both the prisoners "*guilty*" of the crime of culpable homicide of the deceased, whose death from rupture of the spleen caused by the injury inflicted upon him by both the prisoners has been clearly proved by the evidence of the eye-witnesses, the confessions of prisoner No. 7, and the tenor of the answer of No. 8, and the evidence of the civil surgeon who examined the body. I concurred in this verdict and sentenced them, prisoner No. 7, to seven (7) years', and No. 8, to five (5) years' imprisonment, with labor and irons, according to what I considered their different degrees of guilt.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners have appealed, but have not in their petition urged any tangible grounds. The crime of culpable homicide is clearly established against them. But the circumstances of the case do not seem to me to call for the severe sentence passed on them. The deceased married the sister of the prisoners; the prisoner Wuzeer married a woman of inferior rank, the daughter of a *koloo*, or oilman, and there existed ill-feeling between them on this account. There was a quarrel, and deceased called the prisoners *koloo*. This term of reproach was of course extremely offensive to them, and provoked them to assault the deceased. The beating, though continued, was not of such a kind as would have caused death, had the spleen of the deceased not been in a diseased state. The medical officer distinctly states that the other injuries were not sufficient to cause death.

On the whole, I think it sufficient to sentence the prisoner Doondeeah to three (3) years', and the prisoner Wuzeer to one (1) year's imprisonment, with a fine of rupees twenty-five (25) each, payable in a month, or otherwise to labor till the fine be paid, or the term of the sentence expire.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SEETARAM SINGH

24-PERGHS.

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Case of SEETARAM SINGH.

Sudden affray with culpable homicide by fire-arms. Prisoner allowed the benefit of a doubt as to whether his opponent was not the aggressor, and sentenced to seven years' imprisonment.

CRIME CHARGED.—Affray attended with culpable homicide of Chuttoo Singh and Madhub Misser.

Committing Officer.—Mr. E. Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 4th February 1853.

Remarks by the additional sessions judge.—An affray took place on the 23rd of October in the village of Undool, in the thanna of Sulkea, in which armed persons, in number it may be about thirty, joined and two persons are said to have been killed. The jemadar of a neighbouring place was soon informed of the circumstance, and he proceeded to the spot and sent word of what had taken place to the darogah, who sent the mohurir to the scene of crime, and the next day he himself followed him there, the distance from the thanna being about three or four *coss.*

There was no witness present who could explain the cause of the affray ; but from the record it is supposed to have arisen owing to a dispute which had taken place about two days before between two youths, one of whom is a member of the family of the late Rajah Rajnarain, and the other is a son of Preonauth Mullick. The families both live in the village of Andool, but about half a mile apart from each other. The affray was supposed to have been more serious than the evidence before me proves it to have been, and only one person has been committed for trial for being engaged in it, yet it is unnecessary for this court to comment on the neglect of the police, for the affair was brought to the notice of the superintendent of police by the magistrate on the day that the prisoner was committed for trial.

The prisoner is much above six feet high and he had been a servant of the family of Rajah Rajnarain, but at the time of the dispute he was in the service of Preonauth Mullick.

According to the evidence of the witnesses, about thirty men, among whom was the prisoner, went to the house of Rajah Rajnarain where a dispute took place, and the parties went about three or four *beegahs* from the house, when Chuttoo Singh, a servant of the Rajah, cut at an opponent and was shot in the body with a charge from a carbine, containing bird-shot, and a pistol bullet, and a bit of iron. The weapon might have been discharged about twenty yards from Chuttoo Singh or from a much shorter distance. It was fired by the prisoner, and it

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had apparently been previously loaded. Chuttoo Singh was taken to the hospital, were he died after three days, owing to inflammation which was brought on by the wounds.

There is no evidence to show what has become of Madhub Misser, whose name is in the charge.

A man called Sree Kishen Doobey, who is a servant of the family of Rajah Rajnarain, was wounded with bird-shot fired from another gun, and he has the marks of the wounds on his person. The prisoner was apprehended in the suburbs of Calcutta on the 5th of November, and he then had a fresh wound on him. In his defence he allows that he witnessed an affray between the two parties, but he discouraged them from fighting, and that he himself received an injury on the occasion. The carbine was not produced in court. Considering that the parties met with loaded guns and fought, and that Chuttoo Singh was killed in the affray, I think that the crime is deserving of more punishment than I can impose, and I propose that the prisoner be sentenced to at least fourteen (14) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—This is a very unsatisfactory case. It is uncertain whether one or two men beside Chuttoo Singh were or were not killed.

The circumstances under which the occurrence took place are quite uncertain. The evidence for the prosecution is conflicting as to who were the aggressors.

The deceased, Chuttoo Singh, before his death stated that Preonauth Mullick's servants attacked his master the Rajah's house and challenged him and others to fight; that he would not, on which the prisoner struck him with a *ghorassa*, and Dahoo fired at him with a pistol. At the same time the other wounded man of the same party, Sreekishen, stated that Preonauth's people were carrying off his master's servant Madhub; that he and Chuttoo and others interfered, when, by Preonauth's directions, the prisoner and others came up and fired and knocked him and Chuttoo down.

On the trial this witness repeats the same story, but is unsupported by any other witness as to Madhub being attacked or seized. None of the other witnesses pretend to have seen the commencement of the quarrel. Nos. 2, 4 and 5 state, that they were attracted by the quarrel, they saw Chuttoo cut some one with a sword, upon which prisoner fired and Chuttoo fell. An equal number of witnesses are either silent as to Chuttoo's having used a weapon, or have stated that he had nothing but a *lota* in his hand, and was washing his mouth at a *khal*, when a squabble commenced and prisoner fired at him. All the witnesses are unanimous that it was by the prisoners hand that the fatal shot was fired.

Wholly unsupported as it is by other evidence, I cannot give credit to the story of Sreekishen that the fellow-servants of the prisoner were seizing or beating Madhub, and that on Chuttoo's interference

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in order to release him, they fired at and killed him. This would undoubtedly be wilful murder Whether Chuttoo cut at any one before the shot was fired at him is, as already noted, a doubtful point. But it is fair to allow the prisoner the benefit of that doubt, especially as he has himself received a wound, and the infliction of that wound may have been the provocation to him to fire. On the other hand, the prisoner having from beforehand his carbine loaded, without any explanation of the purpose for which it was loaded, is an aggravating circumstance. It looks as if a quarrel was anticipated and a determination in such a case to proceed to extremities.

On the whole a sentence of seven (7) years' imprisonment, with labor in irons, appears an adequate sentence under the circumstances. A warrant to this effect will therefore be issued.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

KRISHNO THAKOOR

versus

RAMKUNTH GARROW (No. 1), GOBIND GARROW (No. 2), CHALLAH GARROW (No. 3), BHOLANATH HODEE CHOWKEEDAR (No. 4), FALGOONAH GARROW (No. 5) AND GOBURDHUN MUNDUL (No. 6).

MYMENSING.

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Appeal rejected, there being no ground for doubting the propriety of the conviction.

CRIME CHARGED.—Nos. 1 to 3, 1st count, burglary in the house of the prosecutor, and theft of cash and property valued at rupees 394-12-0; 2nd count, Nos. 1 to 6, knowingly receiving and possessing rupees obtained by the above theft; 3rd count, accessaries after the fact to the said burglary and theft; and 4th count, privity to the said theft.

CRIME ESTABLISHED.—Nos. 1 to 3, burglary, and Nos. 4 to 6, knowingly receiving stolen property.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 14th January 1853.

Remarks by the officiating sessions judge.—The statement of the prosecutor is that at the end of Assar last, a burglary was committed in his house at night, and a *lotah*, containing rupees 393, which he had buried in the floor under a chest, carried off, together with some brass utensils; that he was much distressed when he found that so large an amount had been stolen; that he reported the affair to his neighbours, and was making inquiries with a view to obtain a clue to the theft, but having done so in vain he was about to report it to the police, when he was met by prisoners Nos. 4 and

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6, who brought him back, saying that they would make inquiries about it for him, and at the end of four days they gave up rupees 199, saying that they recovered this amount from prisoners Nos. 2, 3 and 5. The prisoners Nos. 4 and 6, then reported to the thanna that his (prosecutor's) cows had destroyed the rice field of Nos. 2 and 3, and brought back a burkundauz (Beharee Singh, witness No. 19,) to the village to inquire into their complaint of trespass, to whom the prosecutor related all the particulars of the prisoners' having given rupees 199 to him. The burkundauz then began to charge them, when No. 6 gave up another sum of rupees 50, to one Ram Shaha, to be delivered to the prosecutor, and Ram Shaha gave it to his (prosecutor's) son, and No. 4 also gave Ram Shaha rupees 20, to give to the prosecutor, who took it from him. The burkundauz then took Nos. 2 and 3 to the thanna, and the mohurir repaired to the spot to make further inquiries, to whom also No. 1 gave a small part of a bamboo (*choonga*) containing rupees 20, which he dug up in a field near his house, where he had buried it, and No. 5 also gave up rupees 20, as part of the stolen property. No. 1 when giving up rupees 20 to the mohurir, confessed to the theft, saying that it was planned by No. 3, who enticed him and No. 2 to accompany him, saying he knew where the prosecutor kept his money. Nos. 2 and 3 also confessed before the mohurir to having committed the theft, and obtained their shares in the same. Nos. 4 and 6 denied the charge, saying, that they did not dissuade the prosecutor from reporting it to the thanna, No. 4 adding that the money he gave to the prosecutor was his own, and that he did so through fear. No. 5 also denied saying that he had heard from No. 4, that Nos. 1, 2 and 3 had committed the theft, and that when they gave up the money to them (Nos. 4 and 6), he kept rupees 20 out of it which he gave up. Before the magistrate No. 1 confessed, and admitted the confession he made at the thanna, and the others denied the charge—No. 2 urging that he confessed to the mohurir through the maltreatment of the prosecutor; No. 3 that he confessed through fear; No. 4 that he was about to report the theft to the police, and that the prosecutor had beaten and confined him, and after taking money from him denounced him to the police; No. 5, that the prosecutor gave him rupees 20, to induce him to inquire into the theft; and No. 6 that he had reported to the burkundauz that Nos. 1, 2 and 3 had committed the theft; that he inquired into it and gave prosecutor what he recovered, and that he was not originally charged, but sent in as a witness by the police. In this court all the prisoners denied the charge; No. 1 urging that owing to maltreatment he gave up his own money; No. 2 that he never confessed; No. 3 that he confessed through maltreatment; No. 4, that he was present at the thanna, and the money he gave up was his own; No. 5 that he did not confess in the Mofussil; and No. 6 that he did not confess, but was making inquiries into the theft,

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and that he was not originally charged but sent in as a witness. The prisoners named witnesses to defence, whose evidence, however, did not avail them. The jury upon the Mofussil confessions of the prisoners as above described, the confession of No. 1 in the foujdaree court, which confessions have been verified in this court, and upon the general circumstances of the case, convicted Nos. 1, 2 and 3 of burglary, and Nos. 4, 5 and 6 of receiving stolen property, a verdict in which I concurred; as their Mofussil confession, and No. 1's foujdaree confessions have been duly verified by the subscribing witnesses, and the giving up of the rupees as part of the stolen property by the prisoners as set forth in column 11 of the calendar, has been proved by the witnesses therein named, and the plea of the prisoners that they gave up their own money from maltreatment has neither been borne out by the evidence, nor by the circumstances of the case. There were some slight discrepancies in the earlier proceedings which would at first sight lead to a doubt as to how the money could have been so cleverly stolen from the spot in which it was hid, but the theft is readily accounted for from the fact that prisoner No. 3 was formerly a servant of the prosecutor, and must have known well where the money wes secreted.

Sentence passed by the lower court.—Nos. 1, 2 and 3, each, five (5) years' imprisonment, with labor and irons; No. 4, three (3) years' imprisonment, with labor and irons, and Nos. 5 and 6, two (2) years' imprisonment, No. 5 with labor without irons, and No. 6, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners Nos. 1, 2, 3 and 4 have appealed. The petition of appeal contains general imputations of enmity and conspiracy, but I see no ground for doubting the propriety of the conviction. The proof is full and clear. I reject the appeal.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

UMRIT BHOLANEE (No. 1), MAHANUND SIRCAR (No. 2) AND DYA CHASSANEE (No. 3).

BEERBHOOM.

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Case of UMRIT BHOLANEE and others.

A confession admitted only so far as it went, and not as ground for imputing criminality beyond the limit assigned in the confession.

CRIME CHARGED.—1st count, theft attended with the murder of Maturginee Chokree, daughter of Bhugeerut Doss, for the sake of her ornaments, valued at rupees 11-8-0; 2nd count, being accomplices in the abovementioned crime; and 3rd count, aiding and abetting in the abovementioned crime.

Committing Officer, Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 12th February 1853.

Remarks by the officiating sessions judge.—It appears that between 8 and 9 o'clock on the morning of the 10th Poos last, corresponding with the 23rd of December 1852, several women, amongst whom were the two female prisoners, were sitting in the sun, under the wall which surrounded the premises belonging to Mahanund Baboo (the male prisoner), who was also seated hard by; that whilst they were there, Rooknee Talin came up with her two children, one aged six years (the deceased) and the other about eighteen months old, whom she placed by the side of the other women in the sun, and then went home, and was soon followed by the younger child.

After a short time some of the women repaired to their several avocations, leaving the two female prisoners and the child Maturginee still basking in the sun, and the male prisoner sitting on a *morah* at no great distance.

Here the evidence stops. The child was missed; the police were called in; search was made in every direction; but no trace of it was found till the 26th December, when the body was discovered floating in a water-course just outside the village. As soon as the thanna mohurir was informed of it, he proceeded to the spot, accompanied by a number of villagers, and amongst them by Umrit Bholanee (prisoner No. 1), who, on seeing the corpse, spoke out of her own accord, saying that she did not murder the child, but that Mahanund Baboo had killed her. The houses of the suspected parties were then searched. In the inner apartment of Mahanund Baboo's house were observed what appeared to the witnesses to be a few drops of blood, and in his yard was a small hollow in the ground, in which Umrit Bholanee stated that Mahanund Baboo had con-

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cealed the ornaments, which he had taken off the child's body after he had committed the murder, and from whence she supposed he had removed them, when he found that the loss of the child had created such a sensation in the village. The ornaments, which the child had on her person when last seen on the morning of the 23rd December, were not discovered.

The prisoner Umrit Bholanee confessed in the Mofussil, and stated that after the several women had gone away, leaving herself, Dya Chassanee and the child, Mahanund Baboo called to Maturginee, and told her to bring him some fire, as he was smoking; that he then took her inside, and called Dya Chassanee, who is his mistress, and herself, and spoke to them about making away with the child, and taking her ornaments. He promised to give her the pair of armlets, and said he would keep the *hunslee* himself; that then in her presence he seized the child by the neck with both his hands, and took her into an inner apartment of the house, and there murdered her. Dya Chassanee was standing close by at the time, while she herself was watching outside; that after the child was dead, Mahanund and Dya Chassanee put the body into a basket, and whilst she kept a look-out lest any one should be passing along the road, they took it away and threw it into a neighbouring *khandar*, or water-course, and that afterwards they buried the ornaments in the yard of Mahanund's house, close under the outer wall.

On the 27th December the prisoner repeated this statement before the officiating magistrate without any material difference, though not in such detail.

The other two prisoners denied all knowledge of the crime or how the child had come by her death.

On the 20th January the officiating magistrate, considering that the prisoners Mahanund Baboo and Dya Chassanee were the principals in the murder, and that Umrit Bholanee was only an accomplice, offered her a pardon, on condition that she would disclose all circumstances of the case within her knowledge. She accepted the offer, and on the 21st January her deposition was taken down on oath; but as it differed in essential points from what she had already stated in her previous confessions, he recalled the offer he had made, and on the 22nd January committed all three prisoners to the sessions.

On the 31st January the officiating magistrate discovered that he had exceeded his authority in recalling the offer of pardon, and therefore requested me to cancel the commitment, and at the same time reported the nonfulfilment of the conditions by the prisoner and solicited orders on the subject, forwarding the record for my inspection. On the 1st February, I compared the two statements the prisoner had made before the magistrate, and concurring in opinion with the officiating magistrate that she had not fulfilled the conditions on which pardon was offered, I authorized him to proceed against her as a prisoner, as he had intended. On the 2nd February, the day

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originally fixed for the trial, the papers were received duly revised, and the trial commenced.

In this court the facts stated in the first part of this report are satisfactorily established by the evidence for the prosecution.

The prisoner No. 1 pleads "*not guilty*" to the first count of the charge, but states that Mahanund Baboo and Dya Chassanee committed the murder, and that they called her to throw away the body, which she refused to do, she also acknowledged her Mofussil and foujdaree confessions.

The prisoners Nos. 2 and 3 plead "*not guilty*."

The *futwa* of the law officer pronounces the prisoner Umrit Bholanee guilty of the second count of the charge, *viz.*, of being an accomplice in the theft attended with the murder of Maturginee, and finds the two other prisoners "*not guilty*."

The evidence brought forward in the case for the prosecution against the prisoners Nos. 2 and 3 consists of the following points, *viz.*,—*firstly*, when the witnesses Nos. 13, 14, 15 and 17 quitted the spot, where they had been basking in the sun, that is, when the child was last seen by them alive, the three prisoners and the child were all left there together; *secondly*, the alleged spots of blood observed in the inner chamber of the male prisoner's house; and *thirdly*, the hole or hollow in the yard outside the same house, in which Umrit Bholanee declared that the ornaments of the deceased had been buried.

I place no faith whatever in the second or third points. I do not believe that had there been any hæmorrhage, spots of blood would have been distinguishable on the fourth day after the occurrence, in such a dark chamber as this inner apartment must have been, by the dim and uncertain light afforded by a rag dipped in oil and wrapped round a stick; and with regard to the hole, it is not credible that had it been used for the purpose stated, the male prisoner would have omitted to fill it up, and to obliterate all traces of its existence. If these two points are rejected, and I have myself no hesitation whatever in doing so, there remains no evidence whatever against the prisoners Nos. 2 and 3, as nothing is known of what occurred after the witnesses Nos. 13, 14, 15 and 17 left the spot, except from the statement made by the prisoner No. 1: indeed I am very much inclined to doubt altogether the fact of the prisoners Nos. 2 and 3 being concerned in the murder. I therefore acquit them of the crime charged.

With regard to Umrit Bholanee, there is no direct evidence against her; but the tenor of her confessions in the Mofussil, and before the magistrate, and the nature of her defence on the trial, are, in my opinion, sufficient to convict her of being an accomplice in the crime charged. She admits that she was to benefit by the robbery, and that she was standing outside the house keeping watch whilst the

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deed was being perpetrated within; she also expressly avows that she witnessed the whole proceeding, and actually heard the gurgling in the throat which immediately preceded the child's death. The minute detail with which she describes all that took place, proves, I think, that she was personally present, and to my mind favors the supposition that she was the sole agent.

Her motive for accusing the prisoners Nos. 2 and 3 is sufficiently obvious. She no doubt conceived that by implicating them she would exculpate herself.

I would convict her of being an accomplice in the crime charged, and giving her the fullest benefit of the doubt, slight as I must admit it appears to me, which arises from her accusation of the other prisoners, and from the non-discovery either of any traces of the murder in her house, or of the ornaments which belonged to the murdered child, I would recommend that her life be spared, and that she be imprisoned for life in the zillah jail.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I convict the prisoner Umrit Bholanee on her own confession of standing at the door to keep watch while the prisoner Mahanund strangled the child Maturginee, six years old. I see no reason to doubt the truth of her statement, which she made of her own accord, when the body was found. The body bore marks of strangulation and the child had ornaments on its person when it was last seen; the probability is, therefore, that it was murdered for the sake of its ornaments; and the confession of the prisoner Umrit leaves no doubt of this; the act of which Umrit was guilty amounts to being an accomplice in the murder. I sentence her to seven (7) years' imprisonment, with labor suited to her sex. I do not think that Umrit was the principal agent in the murder, as suggested by the sessions judge; nor do I think that a limited confession can be considered proof of complicity beyond the assigned limit.

PRESENT :

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

SHAMCHAND LUSHKER.

24-PERGHS.

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Case of SHAMCHAND LUSHKER.

Wilful murder in a sudden fit of passion, with a weapon which was at hand. Sentence, transportation for life.

CRIME CHARGED.—Wilful murder of Deegumbur Pode.

Committing Officer, Mr. E. Jackson, joint magistrate of Baraset, 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 9th February 1853.

Remarks by the additional sessions judge.—The mother of Deegumbur Pode states that her son was called away from her house by the wife of the prisoner, and that after she had waited some time for him to come to his dinner, he was brought back by the prisoner and another man, and put down in her premises. The sister-in-law of the prisoner, *viz.*, witness No. 15, who lives with him, states that Deegumbur came to their house; she also saw him when he was dead, and told the prisoner's wife, who alarmed the neighbours, who came and saw the dead body at the house of the prisoner. There had previously been no dispute or quarrel between the two men, who are first cousins, and live two *beegahs* apart.

According to the record the murder took place on the 3rd of December, and it was reported to the police on the 4th, and the mohurir went to the scene of crime on the 5th, and on the 6th, the prisoner confessed before the darogah in the village where the crime was committed. He stated that he was angry with Deegumbur for having denied that he had received rupees six from the prisoner, and consequently he took a *dâo* and cut him down by wounds on the throat. On the 7th of December, he confessed before the joint magistrate, who was encamped in the same thanna and gave a similar account of the murder.

In addition to the usual *sooruthal,* which was written in the Mofussil by the police, the body was examined at the station by the sub-assistant surgeon, who noted different wounds about the neck, and stated that the carotid artery on each side of the neck was cut. The *dâo,* which was produced in court, and which is the weapon which the prisoner is supposed to have used, is seventeen inches long, and weighs rupees thirty, and the prisoner's pleader urges, that it is so sharp that he could have cut the man's head off with it. His witnesses would have proved that the prisoner was at the time in a field at a little distance; but there is no reason to doubt the truth of the confessions, and as I find him "*guilty,*" it is my duty to propose that he be punished with death.

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Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—There is no account of this occurrence except that given by the prisoner, who states, "Unknown to my relation Gopaul, I had given the deceased rupees 6, to keep. On the day of the occurrence I called him to my house and seated him down to smoke. I asked him for the rupees 6, and he denied my giving them to him. In a passion I took a *dâo*, which was in the chopper of the house and calling him inside, cut him with it as he put his head in."

None of the witnesses say that there was any enmity between the parties. On the contrary one of them (Gery Bewa) says that they were particular friends.

The law officer of this court rejects the confessions, because the sub-assistant surgeon deposes that the wound was as of a drawing cut, which, together with the evidence of the witnesses for the defence, is contradictory to what is stated in them, and he declares *kissas* barred, but *tazeer* to be incurred.

It is true that the sub-assistant surgeon says that the wound was as it were of a drawing cut, but his grounds for thinking so are not stated, and they are not *self-apparent*.

There can be no doubt but that the prisoner killed the deceased with the *dâo* in the manner he describes in his confessions, and he has been rightly convicted of wilful murder. The act however appears to have been wholly unpremeditated and perpetrated in a sudden fit of passion with a weapon which was at hand. The prisoner's life may, therefore, I think, with propriety, be spared. He is sentenced to transportation for life.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

BALGOBIND MISSER AND GOVERNMENT

versus

THAKOOR SINGH (No. 4), BHEEM SINGH (No. 5), RAMCHURN SINGH (No. 6) AND NEEDHEE GWALA (No. 7).

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The sentence of the sessions judge confirmed in appeal in regard to three of the prisoners. There being no evidence to show that the fourth prisoner had taken any part in the affray, he was acquitted.

CRIME CHARGED.—Accomplices in a riot attended with culpable homicide of Roopun Misser, grandfather of the prosecutor.

CRIME ESTABLISHED.—Accomplices in a riot attended with culpable homicide of Roopun Misser, grandfather of the prosecutor.

Committing Officer, Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 21st September 1852.

Remarks by the sessions judge.—This is a supplementary calendar.

The particulars of the case were thus described in Statement No. 6 for December 1834, in which year the affray took place.

"This trial having been made the subject of special reference to the superior court, in consequence of non-agreement with the finding in the *futwa* as regards the conviction of certain of the prisoners, the particulars of the case are not repeated here. It is sufficient to state that the prisoner No. 1 was one of the aggressors actively engaged in the inhuman assault upon the deceased, although it is not shown that he wounded him with a sword, which act was confined to the prisoners not yet arrested. Of the other prisoners sentenced to punishment, the prisoners Nos. 8 and 9 were implicated as abettors only: they having been brought to the ground by the other parties for the purpose of measuring the deceased's land."

On the 19th March 1852, another prisoner was arraigned on the charge of complicity, but was acquitted on the ground of his age.

Of the prisoners now before the court, Nos. 4, 5 and 6 appear to have been the principal offenders, all of them having carried swords and having wounded the deceased.

The presence and active participation of the whole is clearly established by the testimony of eye-witnesses and the prosecutor.

The defence of No. 4 is that if he had beaten any one, he should not have beaten the deceased, as he was old and helpless.

Of No. 5 that he has no connexion with the lands which were the subject of dispute.

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No. 6 pleads that he had never been arrested, and has performed sundry acts in connexion with the prosecutor without his attempting to apprehend him.

No. 7 makes the same sort of defence.

None of them raise any distinct plea susceptible of proof in their exculpation, and there appears no doubt whatever of their guilt.

Sentence passed by the lower court.—Nos. 4 and 5, seven (7) years' imprisonment, with labor and irons; No. 6, five (5) years' imprisonment, with labor and irons, and No. 7, four (4) years' imprisonment, without irons, and a fine of rupees fifty (50) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The evidence adduced on the trial and that to be gathered from the old record, show clearly that Thakoor Singh, Bheem Singh and Ramchurn Singh took a very active part in the riot, and were, in fact, the principal offenders. I see no reason therefore to interfere with the order of the sessions judge as regards them. Needhee Gwala was named by the prosecutor and also by the witness Hotee, when the case was first inquired into, but not by Humsund, who now swears to his presence in the riot, nor by Hurgooree, the other prosecutor, or any of the witnesses then examined in the Mofussil. Those who did name him nineteen years back did not accuse him of having used any violence. There is room for doubt as to his having taken any part in the riot; even if it be admitted that the evidence is sufficient to establish the fact that he was present when it occurred, he may have been so without belonging to the party of the rioters. I give him the benefit of the doubt and acquit him.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

NGA TSHO (No. 1), NGA BOON THAN (No. 2), AND NGA SHOOY YA (No. 3).

TENASSERIM PROVINCES.

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Case of NGA TSHO and others.

Murder by Kareens of a man supposed to be a sorcerer and to have caused the death of prisoners' relation. Sentence, one prisoner to imprisonment for life, and another to imprisonment for twenty years. A third prisoner acquitted on account of his confession not having been verified, and the only other evidence against him not being considered trustworthy.

CRIME CHARGED.—Wilful murder.

Committing Officer, Captain H. Berdmore, magistrate of Mergui, Tenasserim Provinces.

Tried before Captain C. Sharp, senior assistant commissioner of Tavoy, Tenasserim Provinces, with power, under orders of Government, dated 8th July 1852, to try commitments from Mergui.

Remarks by the senior assistant commissioner of Tavoy.—The case is rather a peculiar one. The deceased, it appears, was considered a wizard, and to have the power of causing a person's death by means of what the Kareens call *apin*. This is explained to be a fleshy substance, which it is supposed can, by means of charms, be produced in a person's stomach, where it swells and causes death. In the present case it would appear that a young girl, a relation of the prisoners, had died, and the girl's father was at the same time ill, and not expected to live, his head being much swollen; he did, however, subsequently recover. On the morning of the day on which the murder was committed, the two first prisoners brought to the Kareen, Goung Gyouk, a piece of half-burnt flesh, which they stated to be *apin*, and which they said had remained unconsumed in the fire, when the child's body was burnt. They accused the deceased of being the cause, both of the death of the child, and of the illness of the father. The Goung Gyouk (a Christian) says that he does not believe in the power of causing *apin* by charms, and therefore told the men that he could do nothing unless they had seen the deceased strike the child's father; and they consequently went away. About dusk in the evening, the three prisoners (who are all relations) went to the deceased's house, taking with them two *dhalooays*, or Burman swords. There were at that time in the house, the deceased, his wife, his son, a boy about thirteen years old, his daughter, about twelve, and his nephew, whose age is about twenty. The second prisoner entered first without any weapons, asked for some *chunam* (betel) and on being told that there was none for him, desired the deceased to go with him and see the sick person Nga Tsaintan (the father of the child before-mentioned.) Deceased replied that he was sick himself and could not go. Whilst they were talking, the prisoners entered with the two *dhalooays* drawn, one in each hand, and accusing deceased of having killed his father-in-law, (third prisoner's father who had died about some time before, whilst first prisoner was in Moulmein,)

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attacked him with his knife. The deceased's son and nephew left the house when the first prisoner entered, and the wife, as soon as she saw her husband first struck, but the girl, who appears to have stayed longer, says that one of the knives was given to the second prisoner, who laid it down on the ground, and did not take any part in the assault. The second prisoner, however, himself on a trial held here on the 19th July last, (which was cancelled in consequence of its having been entered upon without the proper authority from Government) said that he did make use of the knife, and that between them they succeeded in killing the deceased.

Both the first and second prisoners admitted the murder. The first prisoner, who appears to be much more intelligent than the generality of Kareens, attempted to justify himself by saying that the deceased was a notorious wizard, and was believed able to cause the death of any person he chose; that when his father-in-law's body was burnt, a piece of flesh remained unconsumed in the fire, and that the deceased had threatened to take his (first prisoner's) life likewise: he was therefore in self-defence obliged to kill him. This is one reason that he gives: the other is that he was angry with the deceased for refusing to visit the sick person.

The second prisoner, Nga Boon Than, in his statement before the magistrate said, that when the first prisoner entered, the deceased addressing him said "oh! you are come, too; do you also wish to die like your father-in-law?" and that the deceased then getting up pushed him and he fell; on which first prisoner attacked him with his knife and killed him. On the present trial, he declined saying anything more. At the former one held on the 19th July last, his statement was as under:

"Second prisoner is questioned as to what was done with his knife?—Says that when Nga Tsho, the first prisoner, came in, he gave him one of the knives, and he also joined in the attack on the deceased. The second prisoner spoke with some excitement at that time, and the words he used were '*thay oung kote*,' literally, cut to death."

Two witnesses were examined on the defence. They spoke of the deceased having been regarded as a wizard, and said that under the Burmese Government any person who caused the death of another by *apin* was put to death himself. On being questioned however whether they could mention any instance of a person having suffered on that account, one of them was unable to do so, and the other, an old man of nearly seventy, said that he had heard of such a thing having happened three generations ago.

The third prisoner, Nga Shooy Ya, who is the youngest of the party, and is brother-in-law of first prisoner, says, that he was asked by the other two to go out for a walk, and knew nothing of their intention until they reached the deceased's house, when finding that they contemplated murder, he left them and returned home. The only evidence against this prisoner is Nga Thitsa, and whose house

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is within a call of the deceased. He says that he saw the three prisoners pass on their way to the deceased's house, and that the third prisoner was at that time carrying a *dhalooay*. He also says in his statement before the magistrate that he saw them return again, but that it was too dark to distinguish whether they had any weapons with them or not. To me however he said that he heard them returning, but did not see them, but that his brother-in-law called out to them. It appears that none of the deceased's family saw this prisoner when they left the house, but he might easily have kept out of their way. From the circumstances of the case, I am inclined to think that the prisoner at first hoped to induce the deceased to leave his house, and if so, probably first and third prisoners were waiting outside to attack him when he came out. The jury have found this prisoner guilty; and I think myself that the attendant circumstances are sufficient to justify his conviction.

The most extraordinary part of the case is, that the two first prisoners, although they had ample opportunities, never attempted to effect their escape, or in any way deny or conceal their crime. The murder was committed on a Saturday evening, and neither of them were apprehended until the Monday following, the first prisoner in the morning, and the other in the afternoon. Indeed, the first prisoner, though brought to the Goung Gyouk in the morning, was allowed to go about in and out of the house as he chose during the greater part of the day until the Burman Thoogyee who appears to have come down on hearing of the occurrence, remonstrated with the Goung Gyouk, on which the man was placed in the stocks, and irons were subsequently obtained from Palaw.

From the circumstances of the case, I think there is no reason to doubt that the murder was premeditated, and consequently the only grounds that can be urged in extenuation or mitigation of punishment are the prisoners' belief that the deceased had caused the death of their relation and was likely to cause their own; and their idea that they were justified by ancient custom in what they did. The belief in the power of certain persons to cause death by *apin* is, as far as I can learn, almost universal amongst the Kareens, and it also seems that the deceased was very generally considered to possess that power and had been before accused of using it. Probably, therefore, the prisoners did believe that the death of their relation was caused by the deceased; but the fact that under the Burman Government such persons were put to death does not appear to me by any means proved. All the evidence is that one witness heard that such a thing had happened three generations ago. On the other hand, however, it would seem, from the circumstance of the prisoners giving themselves up so readily, that they did not expect their punishment would be very severe. Perhaps under the circumstances of the case the court may consider that a sentence of imprisonment for life on the two first prisoners, Nga Tsho and Nga Boon Than, and

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one of imprisonment for seven (7) years, on the third prisoner, Nga Shooy Ya, will be a suitable punishment, and this is what I informed the prisoners I should recommend.

Resolution of the Nizamut Adawlut, No. 1579, *dated the* 26*th November* 1852.—(Present: Mr. R. H. Mytton.)—This trial has been held by an assistant commissioner with special powers granted him by Government to hold sessions at Mergui. He has therefore the powers of the commissioner *quo ad* such trials.

Under the rules for the administration of justice in the Tenasserim Provinces, Sections XXXI. and XXXII. the commissioner may sentence on conviction to imprisonment for an unlimited period, and it is only necessary for him to submit the trial to this court when he considers that a sentence of death should be passed. In this case the *locum tenens* of the commissioner is not of opinion that a capital sentence should pass. The case therefore need not have been referred. The record, however, has been perused, and omissions of forms most essential to the administration of criminal justice being observable in the proceedings, the court deem it right, under the general power of control and superintendence vested in them over the functionaries in Tenasserim, to point them out.

First.—No plea of "*guilty*" or "*not guilty*" is recorded after the charge, as required in a sessions trial.

Second.—Copies of confessions have been entered on the record without being verified as given voluntarily, by any person before whom they were taken, as is necessary to make them evidence.

Third.—The record does not show that the prisoners were asked what they had to say in their defence. It is true that Nos. 1 and 3, after having their confessions read over, appear to have been asked whether they had anything to *add* to them, but this is not sufficient. No. 2 does not appear from the record to have had even this opportunity of urging anything in his defence allowed him.

In finally disposing of the case the principal assistant commissioner should carefully consider what is established by the evidence against each prisoner, that is, whether each is proved to have been a principal in the crime as appears to have been his opinion when referring the case, or whether No. 1 only is proved to have been a principal, and No. 2, rather an aider and abettor. His statement made on the trial, which was quashed, was not brought on this record and cannot be used against him. Moreover that trial being void, it is very questionable whether it could be received even if brought on the record.

No. 3 in his statement to the magistrate appears to have stated that he quitted the other prisoners as soon as he heard that they were going to kill the deceased, and this account, which only amounts to a confession of privity before the fact, is not contradicted by any evidence.

Reply of the assistant commissioner, No. 296, *dated the* 17*th January* 1852.—" I have the honor to acknowledge the receipt of

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Resolution of the Presidency Court of Nizamut Adawlut, No. 1579, dated 26th November last, on the trial of Nga Tsho, Nga Boon Than, and Nga Shooy Ya, for wilful murder of a Kareen named Nga Yanthway; and to report that after carefully considering the court's orders as therein conveyed, I have sentenced the first prisoner, Nga Tsho, to be imprisoned for life, the second, Nga Boon Than, to imprisonment for twenty (20) years ; and the third, Nga Shooy Ya, to imprisonment for five (5) years ; and I do not think, as far as I can judge, that a less punishment would be suitable to the nature of the crime.

"This sentence was passed here at Tavoy, as the court's instructions did not direct me to proceed to Mergui for that purpose ; neither did I receive any orders from the commissioner to do so.

"In respect to the court's remark that 'no plea of *guilty* or *not guilty*, is recorded after the charge,' I would beg to be permitted to solicit attention to the fact that after the charge the following entry appears.

"First prisoner, Nga Tsho, pleads '*guilty*.'

"Second prisoner, Nga Boon Than, pleads '*guilty*.'

"Third prisoner, Nga Shooy Ya, pleads '*not guilty*.'

"I beg to return the proceedings to enable the court to satisfy themselves on that point, should they think it desirable. The proceedings will not be required in the commissioner's office, as I submitted another copy to him when the case was first referred.

"The court likewise remark that the copies of confessions have not been verified. This shall be attended to in future; but on the present occasion (as well as I recollect, for I have not the magistrate's proceedings by me,) no witnesses to the confession were entered in his calendar; and indeed I had not thought it would have been necessary where the prisoners did not deny the charge.

"In conclusion I would beg to apologize for again troubling you; but I trust the court will not object to my having explained as far as I am able, the irregularities upon which they have remarked."

Remarks by the Nizamut Adawlut.—(Present : Mr. R. H. Mytton.)—In the Resolution of this court, dated November 26th, three defects in this trial were pointed out. The assistant commissioner shows that the first did not exist.

The second is admitted. It is, that confessions have been admitted on the record as evidence without verification. This is contrary to established practice, and it must be considered what effect the omission to take proof of the confessions has upon the trial. Nos. 1 and 2 have pleaded "*guilty*," and there is proof against them independent of their confessions. Their conviction may therefore be allowed to stand good. No. 3 however has pleaded "*not guilty*," and the only witness against him has not been consistent in his evidence. To the magistrate he deposed that he saw this prisoner going, and returning with the others. In the sessions court that he

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only saw him going, which corroborates what the prisoner pleaded before the magistrate, *viz.*, that he left the other two when he heard that they were going to commit murder. Without legal proof of this admission, the conviction cannot be allowed to stand on the sole evidence of a person who has not been consistent. If the admission were proved, it amounts only to privity. The conviction and punishment of the principals appears sufficient for the purpose of example under the circumstances of the case. It is not therefore necessary to re-open the trial in order to secure this person's conviction, which could not be done without inconvenience. He will be released.

The court observes that questions leading the prisoner to criminate himself have been put. This should be avoided in a trial. The practice has been prohibited by Circular Order No. 129, of the 19th November 1832.

On the third point the assistant commissioner has offered no explanation. As, however, the two remaining prisoners are shown to have pleaded "*guilty*" and the record bears evidence that an opportunity, although not quite in regular form, was given to one of saying anything he wished to plead in extenuation, it may be presumed that, although not distinctly recorded, a similar opportunity was given to the other. For this defect therefore the court do not think it necessary to order further proceedings.

The assistant commissioner will doubtless, in future trials held by him, take care that all is in proper form.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

ABDOOL KURREEM

versus

RAMKANYE DASS, DAROGAH, (No. 1), KISHENKINKER BANERJEA (No. 2), RAJKOOMAR SEIN (No. 3), RAM SINGH, BURKUNDAUZ, (No. 4), DOOLUB, BURKUNDAUZ, (No. 5), MOHESH SINGH, BURKUNDAUZ (No. 6), SOONDER SINGH, MUSKOOREE PEON (No. 7), BHYRUB SINGH, MUSKOOREE PEON, (No. 8), JUGGOMOHUN SINGH, MUSKOOREE PEON, (No. 9) SOUDAGUR, MUSKOOREE PEON, (No. 10), KASHEE SINGH, MUSKOOREE PEON (No. 11), MUSST. SHURUSUTTY DHOBIN (No. 12), KANOORAM DHOBEE (No. 13), KUREEMUDDY (No. 14), SADIK ALEE 1ST (No 15), SADIK ALEE 2ND (No. 16) AND PURTONARAIN ALIAS PERTAUBNARAIN DHOBEE (No. 17).

TIPPERAH.

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Certain of the prisoners were convicted on their own confessions of perjury, in having falsely deposed to the fact of a murder, and burial of the corpse, in a trial, at the conclusion of which the alleged deceased made his appearance in the court.

Others of the prisoners, *viz.*, a police darogah and his subordinates, were acquitted by the Nizamut Adawlut, in dissent from the sessions judge, who had convicted them of subornation of perjury.

CRIME CHARGED.—1st count, Nos. 1 and 2, conspiracy and subornation of perjury in persuading Musst. Shurusutty, Kanooram Dhobee, Kurreemuddy and others, to give false evidence against Abdool Kurreem, for the murder of Pertaubnarain Dhobee, when the aforesaid Pertaubnarain was alive, and in knowingly and intentionally carrying on a false investigation and reporting the same to the magistrate ; 2nd count, Nos. 3 to 11, accomplices in the above offence ; 3rd count, accessaries before and after the fact ; Nos. 12 and 13, perjury in having on the 16th April 1852, before the joint magistrate of Noacolly, and on the 27th July 1852, before the sessions judge of Tipperah, on circuit at Noacolly, deposed, under a solemn declaration taken instead of an oath, that they saw Pertaubnarain Dhobee fall under the eaves of his house from the effects of the blows which they saw struck by Abdool Kurreem with a stick ; such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case ; and Nos. 14 to 16, perjury, in having, on the 16th April 1852, before the joint magistrate of Noacolly, and on the 27th July 1852, before the sessions judge of Tipperah, on circuit at Noacolly, deposed, under a solemn declaration taken instead of an oath, that they, by the directions of Abdool Kurreem, buried the corpse of Pertaubnarain, who had been murdered by the said Abdool Kurreem, such deposition being false, and having been intentionally and deliberately made on a

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point material to the issue of the case: and No. 17, knowingly concealing himself with the intent of harrassing and annoying the late prisoners in the alleged case of murder, he (prisoner No. 17), being altogether uninjured.

Committing Officer, Mr. E. F. Radcliffe, joint magistrate of Noacolly, Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 18th December 1852.

Remarks by the sessions judge.—On the occasion of the last sessions of jail delivery, held at the station of Noacolly in July, Abdool Kurreem, the prosecutor in the present instance, was put on his trial, charged with the wilful murder of Pertaubnarain Dhobee, with whose wife he was stated to entertain a criminal connexion. The prosecutor's father, uncle and some others, were included in the indictment as accessaries after the fact.

It appears necessary to a correct opinion of the merits of the present case that the circumstances connected with the false charge of murder should be first adverted to.

When Pertaubnarain was missed, the village chowkeedar reported his absence, adding that Abdool Kurreem's father had taken the missing man's wife and property under his charge. It was believed, the chowkeedar stated, that pecuniary embarrassment had induced Pertaubnarain to leave his home. Of foul play there was no suspicion.

The jemadar deputed by the darogah to inquire into the accuracy of the chowkeedar's information, reported that it was quite correct. Pertaubnarain being in bad circumstances had gone elsewhere in search of employment.

The darogah communicated the circumstance to the joint magistrate, adding that he had taken an agreement from the missing man's brother, and the father and uncle of Abdool Kurreem to produce Pertaubnarain within fifteen days.

Failing to obtain any intelligence of Pertaubnarain's present residence, and harrassed by the consequence of this agreement, the parties who had entered into it, petitioned the joint magistrate to be released from an engagement they found themselves unable to fulfil, or that the darogah, if still in doubt as to Pertaubnarain's well-being, should be directed to satisfy himself on the point.

This petition was sent to the darogah with orders to make the inquiry desired by the petitioners.

The darogah, accompanied by his mohurir and some burkundauzes, went accordingly to the village, and the result was a most elaborate and apparently praiseworthy report, bringing to light all that had been doubtful regarding Pertaubnarain. It had been satisfactorily ascertained, the darogah stated, that Abdool Kurreem, a youth of twenty years of age, had a guilty *liaison* with Pertaubnarain's wife, and that, availing himself of the husband's absence, on the 7th of

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February, at a neighbouring *hât*, he had paid her a visit, which had been unfortunately interrupted by the husband's return. Finding the door closed, and being refused admittance, Pertaubnarain forced an entry, when his wife's paramour met him at the threshhold and felled him to the ground with a ruler. Abdool Kurreem then closed the door on Pertaubnarain's wife, and obtaining the assistance of his servants, and of a relation, buried the body of his victim the same night. The body was subsequently dug up, and, as the darogah believed, cast for greater security into the sea.

It would be impossible to imagine a case more completely satisfactory, as regards at least the guilt of Abdool Kurreem, than this became when the darogah's report was completed, and as, in fact, it remained, until the appearance of Pertaubnarain brought to light its real character. The prosecutrix was the mother of the missing man; the principal witnesses were his wife Shurusutty, and his cousin Kanooram, while the prisoner's own servants detailed at length the circumstances attending the burial of the body. There were no inconsistencies, and no contradictions in the evidence, which, from first to last, gave the hearers the impression that a heinous crime had indeed at last been brought to light, in spite of a powerful combination to conceal it.

It would occupy too much space to enter into further details regarding this case of alleged murder, the particulars of which were related at length in my letter, No. 403, dated the 23rd of September last. Abdool Kurreem was fully committed to take his trial as principal, and his father, uncle, and some others, as accessaries, or as being privy to the murder of Pertaubnarain Dhobee. In the sessions court all the accused, but Abdool Kurreem were acquitted.

Regarding him I recorded an order that the case should be referred to the Presidency court, conceiving that grounds existed for considering him guilty of culpable homicide. On the same day Pertaubnarain was brought in person into my presence in perfect health; thus placing Abdool Kurreem's innocence beyond a doubt, and causing the inquiry which has led to the prisoners now on trial being committed on the charges set forth in the calendar.

The prosecutor, Abdool Kurreem, described the measures adopted by the police on their arrival at the village. He heard from the room in which he himself was confined for eight days, the cries and complaints of those who were undergoing ill-treatment to induce them to become, as they subsequently became, witnesses in support of the charge of murder. Pertaubnarain's wife, Musst. Shurusutty, was sent for and also ill-treated until she consented to declare that Abdool Kurreem had murdered her husband.

A full detail of the evidence of each of the numerous witnesses, who supported the prosecution, would be impracticable and is also unnecessary.

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The witnesses Noyan Shah (No. 1,) Ramkishen Shah (No. 2,) Hurchunder Shah (No. 3) and Yaseen Chowkeedar (No. 4,) deposed that the darogah and mohurir subjected, through their subordinates, the persons from whom they desired to extract evidence in support of the charge of murder, to excessive ill-treatment for the space of three days. They were bound to a mangoe tree by the mohurir's order and severely beaten, the darogah, though not actually on the spot, being close at hand and within hearing and knowledge of all that took place. Intimidation in every shape was, in fact, resorted to induce them to inculpate Abdool Kurreem. In the instance of Pertaubnarain's wife, a system of coaxing seems to have been pursued, her fears, however, being first acted on, as would appear from the evidence of the witnesses Joadistee Dhobee (No. 15), and Chundeechurn Dhobee (No. 16), who deposed that she was threatened by the mohurir with the application to her person of a very irritating plant. The result of the course of ill-treatment of the males, and of persuasion in the instance of the wife, was that, as might be expected, the desired evidence was given.

It is quite clear from the evidence of the witnesses Mahomed Danish (No. 5), Ramchurn Burnick (No. 6), and Sheebchurn Kurmokar (No. 7), and from the description they gave of the manner in which the witnesses thus created were brought out to give their evidence one by one from the interior of the house, that they were not free agents.

When it became necessary to send in the witnesses to the sudder station, they were carefully forwarded under charge of the prisoners Rajkoomar Sein (No. 3), Ram Singh (No. 4), and Juggomohun Singh (No. 9), the first a thanna *mudud-nuvees*, and the two last burkundauzes. The direct and personal agency of the first prisoner, the darogah, in thus despatching them under surveillance is not deposed to by the *manjhee* and *mullahs* of the boat; but being the Government guard-boat, and under his control only, the presumption is clear that without his orders the witnesses would not have been sent in it, and that the manner in which they were accompanied, originated with him also.

When Pertaubnarain's wife, Musst. Shurusutty had given her evidence, she returned to the thanna, where she appears to have been carefully retained under the darogah's own eyes. In the first instance she was lodged in the darogah's house within the thanna premises, then domiciled with Josamonee Bhooimalee (witness No. 25), the darogah's sweeper, on whose premises finally the darogah built a hut for her. From the darogah also, she received her daily supply of food. The witnesses on these points, Azmutoollah (No. 22), Daim (No. 23) and Josamonee (No. 25), are the thanna jemadar, a burkundauz, and the sweeper. They evidently desired to make it appear that their superior was mainly actuated in his conduct towards the woman by humanity, but they admitted a second reason for

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his wish to retain her near him; this was the necessity of being able to produce her at the then approaching trial in the sessions court. They allowed that when it was requisite to keep a witness for whose attendance no friend or relation would be responsible, with this view, under the eye of the police, it was usual to report the circumstance to the magistrate, and that such had not been done in the present instance. The darogah is not, I fear, entitled to the credit for benevolence claimed for him by these witnesses.

The witnesses Buxshoo *alias* Buxsh Alee (No. 26), Mahomed Hossein (No. 27) and Shah Mahomed (No. 29), corroborated the evidence of the witnesses to the fact relative to the violent and unjustifiable proceedings of the darogah and his subordinates when occupied in manufacturing the evidence they required.

The confessions of the prisoners Musst. Shurusutty (No. 12), Kanooram (No. 13), Kureemuddy (No. 14), Sadik Alee (No. 15), and Sadik Alee (2nd) (No. 16), that they had given false evidence in the case of murder both in the joint magistrate's court and before myself, were satisfactorily proved to have been voluntarily made. These confessions were ample, and of course included mention of the ill-treatment to which they had been subjected, amounting to torture, to induce them to give false evidence.

The darogah, Ramkanye Dass (prisoner No. 1), stated in his defence, that he had used no violence or compulsion towards the witnesses; and that he had reported the murder of Pertaubnarain by Abdool Kurreem, in perfect good faith and fully believing it to have occurred. His care of Pertaubnarain's wife he explained, by commiseration for her helpless condition, and by the necessity of producing her at the sessions court.

Kishenkinker Banerjea (prisoner No. 2), the thanna mohurir, adopted the darogah's defence as his also.

Rajkoomar Sein (prisoner No. 3), the *mudud-nuvees*, stated that he had availed himself of the guard boats conveying the witnesses in the case of murder to the sudder station, to visit a sick brother. He had neither tutored nor taken a part in using violence towards the witnesses.

The defence of Ram Singh (prisoner No. 4), a burkundauz, was simply a denial.

The prisoners Doolub (No. 5), and Mohesh Singh (No. 6), stated that the thanna diary would show that they had been employed elsewhere.

The prisoners Soonder Singh (No. 7), Bhyrub Singh (No. 8), Juggomohun Singh (No. 9), and Soudagur (No. 10), stated that they were simply peons under Regulation XX., and that although they had accompanied the darogah, they had no connexion with such duties as he was then performing.

The prisoner Kashee Singh (No. 11) made a similar defence, adding that he had followed the darogah, and remaining with him one day only, had been sent on duty elsewhere.

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None of these prisoners called evidence to prove the defence set up by each, which in the instances of the prisoners Doolub (No. 5), and Mohesh Singh (No. 6), was not satisfactorily borne out by the thanna *roznama*, their names appearing therein as having been part of the time with the darogah and mohurir.

The remaining prisoners Musst. Shurusutty (No. 12), Kanooram (No. 13), Kureemuddy (No. 14), Sadik Alee (No. 15) and Sadik Alee (2nd) (No. 16), who constituted the witnesses in the false charge of murder against Abdool Kurreem, pleaded, with the exception of Kanooram Dhobee (prisoner No. 13), that they had given evidence under compulsion, and in consequence of violence used towards them by the darogah and his subordinates. Kanooram Dhobee stated that he had actually seen what he had deposed to, namely, the altercation between Abdool Kurreem and Pertaubnarain, in the course of which the first felled the second to the ground with a ruler, and that he, the prisoner, had then run away in alarm.

The prisoners among the above who had witnesses in attendance, declined having the evidence taken, as it had been done already in most instances on behalf of the prosecution.

The Mahomedan law officer acquits the prisoners Ramkanye Dass (No. 1), Kishenkinker Banerjee (No. 2), Rajkoomar Sein (No. 3), Ram Singh (No. 4), Doolub (No. 5), Mohesh Singh (No. 6), Soonder Singh (No. 7), Bhyrub Singh (No. 8), Juggomohun Singh (No. 9), Soudagur (No. 10) and Kashee Singh (No. 11), being the darogah, the mohurir and the police burkundauzes and peons, and the prisoner (No. 17), Pertaubnarain Dhobee. The prisoner Musst. Shurusutty (No. 12), Kanooram Dhobee (No. 13), Kureemuddy (No. 14), Sadik Alee (No. 15) and Sadik Alee (2nd) (No. 16), who constituted the witnesses in the charge of murder, the Mahomedan law officer convicts of perjury and declares liable to *tazeer*.

I am not able, for the reasons I am about to give, to agree with the *mooftee* in his acquittal of the darogah and his subordinates. In that of Pertaubnarain Dhobee, I acquiesce as proper. He is charged with "knowingly absconding himself" (concealing himself I presume to be meant) with the view of harrassing the individuals accused of having murdered him; but the knowledge on his part of what had ensued on his being missed, or the intention to mislead justice by continued absence, are not in my opinion either proved or likely.

The case is one of obvious interest and importance to the community at large, who have certainly cause to demand that their liberties, and perhaps their lives, shall not be placed at the mercy of any darogah, who may conceive the sacrifice of either essential to his reputation for zeal and efficiency. I trust, therefore, I shall be pardoned for entering at length into my reasons for considering the Mahomedan law officer's conclusions as to the innocence of the darogah and his subordinates to have been hastily adopted.

The Mahomedan law officer's first objection to the evidence for the prosecution is that the petition presented to me by Abdool

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Kurreem on the 29th of July last, contained no mention of the witnesses from whom it has been derived. I pointed out to him that the circumstances under which that petition was written and presented were such as to account satisfactorily for its incompleteness of detail. It was prepared by the river side, when, having gone on board my boat, I was about to quit the station, and while the missing Pertaubnarain was yet crossing the river to present himself before me. I need not, I trust, remark that I participated cordially in the satisfaction felt by all when Abdool Kurreem's innocence was thus clearly established, and that this haste in preparing the petition was not necessary. But Abdool Kurreem's thoughts ran at the moment, no doubt, less on the prospect of retaliating on those who had caused him so much suffering, than on the prospect of obtaining his own immediate release. On the general correctness or deficiencies of a petition prepared under such circumstances no stress should be laid, and the same remark applies to the brief statement taken by me at the moment from Abdool Kurreem, in which the Mahomedan law officer notices a similar omission.

In fact, the Mahomedan law officer's objections to the evidence of these witnesses as not being named by the prosecutor or by the witnesses in the false case of murder, seem to be amply answered by reference to the circumstances under which their evidence was obtained. The joint magistrate proceeded himself to the very spot at which the darogah had prepared the charge of murder, and ascertained, through personal inquiry, who were the parties best acquainted with all that occurred, and having found them required them to depose to what they witnessed. There appears to me to be no reason whatever for rejecting the evidence of these witnesses on the grounds adopted by the law officer.

The Mahomedan law officer in the next place observes that the evidence is in itself contradictory. Admitting that the precise form and degree of ill-treatment to which the witnesses in the case of murder were subjected are not described by each witness in precisely the same way, and that some degree of exaggeration is seen probable, even then the discrepancies are slight, and are certainly not such as to justify the rejection of the evidence to the main fact that the witnesses in the murder case underwent much ill-treatment, with the view of compelling them to give false evidence to serve the purposes of the police.

The Mahomedan law officer then remarks that no motive is apparent for the concoction of the false case of murder by the police, and that its real originator is yet unknown. The answer to this objection must embrace a remark already made by the Sudder Court "that it is extraordinary that the police should have gone such lengths to prove a murder which would have been disproved at any moment by the accidental re-appearance of Pertaubnarain."

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The joint magistrate, in reporting to the superintendent of police the result of his visit to Sundeep, stated that it was generally believed that an illicit connexion had, in fact, existed between Abdool Kurreem and Pertaubnarain's wife, and that Pertaubnarain returning home rather earlier than was anticipated, found them together within the house. The joint magistrate is also of opinion that an altercation took place, in the course of which Abdool Kurreem struck Pertaubnarain with a ruler, and that the latter, fearing the publicity likely to be given to his wife's infidelity, immediately left his home. It will also be observed that the prisoner Kanooram Dhobee (No. 13), who is Pertabnarain's cousin, still asserts that such was in fact the case. Even the zemindar, who is perfectly free from suspicion of having countenanced the false charge of murder, reported to the joint magistrate, as a matter of duty, that according to general rumour Pertaubnarain had been murdered by Abdool Kurreem.

The darogah then appears to have arrived on the spot impressed with a conviction that he must either produce the missing man, or account satisfactorily for not being able to do so. He was about this time also attacked with incipient blindness, an infirmity he was most desirous of concealing from his superior, and a character for efficiency and activity was in all probability a matter of more anxiety to him at this moment than at any other time. Finding the rumour of Pertaubnarain's death so generally current, he seems to me to have accepted it as true, and to have felt assured that he might fabricate the evidence, which was not legitimately at hand, without any fear of Pertaubnarain's re-appearance. Thus only can I account for what must otherwise be considered as weak and foolish an act as it was certainly a wicked one; for even if he believed that Abdool Kurreem had murdered Pertaubnarain, the collateral circumstances attending the murder which implicated so many others must have been pure and gratuitous inventions of his own.

The Mahomedan law officer's final reason for considering the police entitled to release, is that as *they* labored to complete the case of murder so did the joint magistrate's *amla*. This imputation on the latter I consider quite gratuitous and uncalled for. The witnesses in the false case of murder came in prepared by the ordeal they had undergone, to give and not swerve from a certain line of evidence. The joint magistrate's *amla* recorded, I presume in the presence of their superior, what the witnesses deposed to and no more. Where does the Mahomedan law officer find that they possessed a knowledge of the darogah's proceedings and played into his hands? And if they did, why should the police escape because the *amla* have done so?

I have now noticed all the material points set forth in the *futwa* as entitling the darogah and his subordinates to an acquittal. I am bound to add that to me they appear technical and inconclusive, and that the prisoners Ramkanye Dass (No. 1) and Kishenkinker Banerjea (No. 2), have been duly convicted of conspiracy and subornation of

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perjury, and the prisoners Rajkoomar Sein (No. 3), Ram Singh (No. 4), Doolub (No. 5), Mohesh Singh (No. 6), Soonder Singh (No. 7), Bhyrub Singh (No. 8), Juggomohun Singh (No. 9), Soudagur (No. 10) and Kashee Singh (No. 11), of being accomplices in both offences.

Should the view I have taken of the case be adopted by the superior court, I would beg to remark that the darogah and mohurir are both old men, and that the former is nearly, if not entirely, blind, besides suffering from a painful internal complaint. The mohurir is apparently robust and healthy. I am somewhat at a loss what degree of punishment to recommend, but it appears that seven (7) years' imprisonment without labor, in the case of the darogah, and with labor adapted to his age and previous habits in that of the mohurir, would be a sufficient penalty for their misconduct.*

In the degree of criminality of the prisoners Rajkoomar Sein (No. 3), Ram Singh (No. 4), Doolub (No. 5), Mohesh Singh (No. 6), Soonder Singh (No. 7), Bhyrub Singh (No. 8), Juggomohun Singh (No. 9), Soudagur (No. 10) and Kashee Singh (No. 11), I can observe but little difference. All appear to have accompanied the darogah, and to have aided and abetted in the violence necessary to induce the individuals selected for the purpose to act the parts of witnesses against Abdool Kurreem. Referring to the influence under which they doubtless acted, I would suggest three (3) years' imprisonment, with labor in irons, as a fitting punishment.

In the instances of the prisoners Musst. Shurusutty (No. 12), Kanooram Dhobee (No. 13), Kureemuddy (No. 14), Sadik Alee (No. 15) and Sadik Alee (2nd) (No. 16), I would observe that Musst. Shurussutty is very young and apparently very silly, but as Kanooram Dhobee is extremely aged (the calendar describes him as being sixty years of age, to which I am inclined to add fully ten years,) so are Kurreemuddy and the two Sadik Alees mere youths, and that all of them appear to have been compelled to enact the parts they did by excessive violence and ill-treatment. I agree with the Mahomedan law officer in convicting them of perjury; but think that under the circumstances, a year's imprisonment, with labor, but without irons, will be a sufficient penalty for adhering before the joint magistrate and myself to the story forced upon them by the darogah.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoners Nos. 1 to 16, are charged with subornation of perjury and perjury. The darogah, mohurir, assistant writer, burkundauzes and peadas attached to the Sundeep thanna are some of the parties.

Buksh Alee, Abdool Kurreem, Mahomed Hossien and others, were committed by the magistrate of Noacolly to the sessions on charge of the murder of Pertaubnarain Dhobee and were, save Abdool Kurreem, acquitted by the judge, Mr. Metcalfe.

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Previous to the despatch of the report of the trial regarding Abdool Kurreem, Pertaub made his appearance, upon which all the police officers were made over by the joint magistrate on charge of subornation of perjury, and the witnesses who had sworn to the assault on Pertaub and to his death and burial were charged with perjury. The prisoners who were charged with murder, are amongst the witnesses at the present trial, as are Noyan Shah, Ramkishen Shah and Hurchunder Shah, in whose house the witnesses in the murder case are said to have been tutored and forced to give their evidence.

The statement of Buksh Alee and the others who were prisoners in the trial for murder must of course be received with great caution. They say they were confined and beaten and tutored by the police. The charge is made in general terms and no sufficient evidence establishes by whom or by whose order these acts of violence were committed. It is very probable that the police did, as is too frequently the case, use means which the law does not sanction to ensure the conviction of the parties accused of the murder, but I do not find on the record such proof as would justify a conviction of the charge, on which the police officers are arraigned.

The evidence of the three independent witnesses named above before the magistrate and in the sessions court is very contradictory. They all in the foujdaree court deposed to the fact that the prisoners Nos. 7* and 10, two peadas, used violence towards the parties charged with the murder and towards others, who were after being in confinement brought forward to give evidence against him. The burkundauzes were in charge of the prisoners under orders of the head of the police and are not, so far, responsible. In the sessions court at one time they say they saw no one beaten, at another they saw certain parties bound and heard cries. They know not whether the darogah and mohurir, &c., were aware that any one was beaten and partially deny their foujdaree depositions. Joadistee Dhobee, a witness, one of the prisoners in the murder case, in the foujdaree court, deposed that he and others were tortured and bound by the order of the mohurir. In the sesssions court he swore that neither the darogah nor mohurir beat any one, nor did he see the burkundauzes beat any one.

Mahomed Danish, Ramchurn Burnick, Sheebchurn Kurmokar, Doorgaram Shah and Kaleedass, deposed that the witnesses in the case of murder gave their evidence voluntarily.

Aboo Talib, Aseehooddeen and Amjud, the manjhee and boatmen of the guard boat, which conveyed the witnesses in the case, know nothing of any violence having been committed on them.

Buksh Alee, one of the principals charged, deposes, that one Gholam Nubbee, mohuladar, and the moonsiff of Sundeep, with whom

* Soondur Singh and Soudagur.

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he is at enmity, caused the false charges to be preferred against him. Mahomed Hossein, another prisoner, supports Buksh Alee, and both say that Daim, son-in-law of the latter, gave the darogah and mohurir rupees 17 in the course of the inquiry into the murder.

Uusuf, also a prisoner, says, he heard screams, but did not see Shurusutty and the other ill-treated.

Such is the abstract of the principal evidence for the prosecution; it certainly does not fully and clearly exonerate the police authorities from the imputation of having exceeded their authority; but the whole of the evidence when duly weighed is not of that nature, which would justify their conviction *on the charge of subornation of perjury.* The evidence of Buksh Alee, one of the principals in the case, tends to indicate other parties through whose influence the false charge of murder was got up against him and his relatives. Under the circumstances adverted to, the court acquit the prisoners Nos. 1 and 2 of subornation of perjury, and the prisoners Nos. 3 to 11 of being accomplices in the same. All of them plead "*not guilty.*"

The prisoner No. 12, Shurusutty, is the wife of Pertaubnarain Dhobee, and Kanooram (No. 13) his cousin; the former confesses that she gave false evidence in the murder case, having been tutored by the police; Kanooram's answer is nearly to the same effect. Kureemuddeen (No. 14) and Sadick (No. 15) son of Mynooddeen and Sadick (No. 16,) son of Kaim, also confess to having deposed falsely, under the influence exercised over them by the police.

It will be seen that they adhered to these false statements even before the sessions judge, in whose court at all events no unfair means could have been employed.

The sessions judge, in consideration of the circumstances noticed in his letter of reference, has sentenced them to the reduced punishment of a year's imprisonment, without irons, with labor, on proof of perjury with which they are charged. There is no reason to interfere with this order, which is hereby confirmed.

The court observe that the law officer's remarks regarding the joint magistrate's *amla* are beyond the case. They were not on their trial and no mention of them should have been introduced into the *futwa.*

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT AND KALEE KOOMAR NAG

versus

MUDUN MOHUN ROY (No. 11), HUR MOHUN ROY (No. 12) AND RAMDYAL DOSS (No. 13).

BACKERGUNGE.

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It is perfectly legal for a sessions judge to direct the magistrate to inquire for further evidence in a trial, even after the defence, and proof in support of it, has been taken in the sessions court, before taking a *futwa* from the law officer.

CRIME CHARGED.—Riot attended with the culpable homicide of Ram Lochun Nag, and the wounding of Adoo Khuleefa, on the 27th May 1852.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Ram Lochun Nag, and the wounding of Adoo Khuleefa.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 29th November 1852.

Remarks by the officiating sessions judge.—The prosecutor in this case, Kalee Koomar Nag, a son of the deceased, Ram Lochun Nag, deposes, that he was away from home at the time the riot took place; that there has been a quarrel of long-standing between Chunder Narain Nag and Kalee Koomar Roy and others, on account of some land held by the wife of Chunder Narain Nag, and also on account of a *melah* which the latter had established, which was held during the month of Bysack, and by which a previously established *melah* of Kalee Koomar Roy was injured; the people preferring that of Chunder Narain Nag, and not frequenting the other in consequence. That a day or two after the riot he received a letter, stating that Kalee Koomar Roy and his people, in number about 300 or 350, had come to attack the house of Chunder Narain Nag and carry him off; and that when deponent's father, Ram Lochun Nag, Hur Chunder Ghose, Adoo Khuleefa and Mohib Alee, had come forward to prevent them, the rioters had wounded Adoo with a *soolfee*, and his father with an *utur* (a two or three-pronged fish-spear), carried the latter off, and, having got up a false charge against him of attacking the house of Hur Mohun Roy, had taken him to the thanna, and stated that he had been wounded in that attack whence he had been sent into the sudder station. On hearing this, deponent came straight to Burrisal, and found his father with two very severe wounds under the left armpit, the ribs being broken apparently, from which wounds he died in the hospital about fourteen or fifteen days afterwards.

Hur Koomar Roy (prisoner No. 10)* states before the magistrate that he was at Shampore, at the time the riot was said to have occurred; that he had heard that Chunder Narain Nag's people

* Released by the lower court.

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had attacked Hur Mohun Roy's cutcherry, and says that this case has been got up against him on account of the enmity borne him by the Nags. He repeats his denial in the sessions court. Mudun Mohun Roy (prisoner No. 11) says the same as the last. Hur Mohun Roy (prisoner No. 12) says before the magistrate, that he has a quarrel with Chunder Narain Nag about a *khal*, and that on the 15th Jeyt, about 4 in the evening, Chunder Narain Nag and others, amounting to 100 or 125 men, attacked the house of his ryot, Bhoirub Baroe, and plundered it, and then attacked his own house, broke open a box, carried off rupees and other property; that they then attacked the house of his partner, Nubo Koomar Roy, and that Ram Lochun Nag, deceased, was wounded in that attack. Ram Lochun fell, and this prisoner afterwards had him conveyed to the thanna; and that the complainants have got up this false charge against him to quash his complaint against them. In the sessions he denies his guilt as before. Ramdyal Doss (prisoner No. 13) denies all knowledge of the case in the magistrate's court and at the sessions. Ram Soonder Doss (No. 14) ditto, ditto. This man died whilst under trial. Soudagur Mollah, (No. 15,*) denies all knowledge of the case. Arif Mollah, No. 16,* ditto.

The first witness, Hur Chunder Ghose, the brother-in-law of the deceased, states that on the 15th Jeyt, about 4 in the afternoon, he heard a noise near his house, and going out with the deceased Ram Lochun Nag, Adoo Khuleefa and Mohib Alee, and proceeding to the western bank of a tank at the back of the house, he saw Kalee Koomar Roy, and with him 300 or 350 men, armed with swords, shields, *nezas*, *soolfees*, *aturs* and calling out to attack the house of Chunder Narain Nag, and seize and bring him away. On hearing this deponent and his friends gave *doohae*, and Kalee Koomar Roy and Hur Koomar Roy (prisoner No. 10) ordered their men to seize them. When they came forward to do so, deponent and Mohib Alee ran to the northern side of the tank, and the deceased, Ram Lochun Nag and Adoo Khuleefa fell into it, when one of the rioters, who deponent could not say, threw an *atur* (a two or three-pronged fish-spear) at Ram Lochun Nag and wounded him with it, when a cry was raised that he was killed; on which they pulled him out of the water, and five or six of them, seizing him by the feet, hands and head, lifted him up and carried him off towards the house of Kalee Koomar Roy; could not tell what became of Adoo Khuleefa at that time, through fear. Went to the thanna the same day and gave his deposition. Had heard that the prisoner Hur Mohun Roy had taken Ram Lochun Nag to the thanna, and that he had been sent into the station in a wounded state, where witness afterwards saw him; he had two wounds on the left side, from the effects of which he afterwards died. Heard on his return from the thanna that Adoo Khuleefa had been wounded on the left leg below the

* Released by the lower court.

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knee by a *soolfee*. There has been a quarrel between Chunder Narain Nag and Kalee Koomar Roy for the last five or seven years, on account of some land belonging to the wife of the former, and because Chunder Narain Nag had established a *melah* in Bysakh, by which a previously established one of Kalee Koomar Roy had been injured. The people of Kalee Koomar Roy had once before come to attack the house of Chunder Narain Nag and carry him off, but the police jemadar was there and prevented their doing so, when they shut up his *khal* and went away. The thanna jemadar had been sent there in Bysakh last, to prevent a breach of the peace, which was anticipated between the two parties, the Roys and the Nags, and had left only a few days before the present riot took place. Witness recognizes and identifies all the prisoners as present and having weapons in their hands, but cannot say what kind of weapon each had. The prisoner Hur Koomar Roy (No. 10), a brother of Kalee Koomar, lives at Koforcatee, four *ghurries* distant from the house of the Nags. The other prisoners reside in mouza Betra, only ten or twelve *beegahs* distant from Chunder Narain Nag. The Roys of both places are related.

Witness No. 2, Adoo Khuleefa, confirms the above, and states that he does not know who wounded him when he was in the tank; nor could he tell who threw the fish-spear at Ram Lochun Nag. Saw him carried off with the spear sticking in his side by the prisoners.

Witnesses Ram Kanye Nag (No. 3.) Iswar Chunder Nag (No. 4), Mudun Ram, (No. 5), and many others corroborate the above evidence in most material points.

The civil assistant surgeon deposes to deceased having had two wounds on the left side, each about two inches in circumference, and of a most dangerous nature; that the wounds had been inflicted by barbed fish-hooks or a fish-spear, and that the deceased died from exhaustion caused by internal hæmorrhage, owing to the awkward manner in which the fish-hooks or spear had been extracted.

After going through the evidence in the counter-charge made by Hur Mohun Roy's gomashta, in which it was stated that on the 15th Jeyt, Chunder Narain Nag's people had attacked and plundered his house, and that it was in that attack that Ram Lochun Nag had received the wounds of which he died; and taking into consideration the long-standing animosity between the two parties; that most of the witnesses in the first case were relations or prisoners of the Nags; that each one had named at the thanna and in the foujdaree many more prisoners than he could possibly have recognized and remembered at the time of the riot; and that of all the witnesses no one could tell who wounded Ram Lochun or Adoo; but having at the same time no doubt that an affray or riot had taken place in which Ram Lochun Nag and Adoo had been wounded as before described; I thought it necessary to direct the magistrate to make a further inquiry and endeavor to ascertain from witnesses, who were indepen-

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dent of both parties, in which place Ram Lochun Nag had been wounded, whether at the house of Chunder Narain Nag when defending it, or in an attack upon that of Hur Mohun Roy; this was done. And from the evidence then adduced by respectable witnesses unconnected with either party, it is proved that on the 15th Jeyt, about 150 men on the part of Hur Mohun Roy, armed with *lattees, soolfees, aturs,* &c., were proceeding to Sheebpore and Rampore to seize some of the ryots of Chunder Narain Nag, in revenge for the Nags having that morning carried off the son and nephew of Bhoirub Baroe, a ryot of Hur Mohun Roy (whose house Hur Mohun has stated in his reply was attacked by the Nags on that day); that when they were near the house of Chunder Narain Nag the latter came out with his men armed and abused the Roy's party, when a fight commenced, and two men being wounded on the part of Chunder Narain Nag and one on the side of the Roys, the former retreated, when in so doing Ram Lochun Nag fell into the tank, and was there wounded by a fish-spear, as before described, when the prisoners carried him off with the spear sticking in his side, and took him to the thanna as before stated. These witnesses only recognized Mudun Mohun Roy (No. 11), Hur Mohun Roy (No. 12) and Ramdyal Dass (No. 13), of the prisoners on their trial; and they have been convicted and sentenced as shown.

Sentence passed by the lower court.—Nos. 11 and 12 each, six (6) years' imprisonment, with labor in irons, and No. 13, five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners have appealed. Mr. Norris for the appellants contends—*first,* that the evidence, upon which the sessions judge has rested his conviction of the prisoners, *viz.,* that adduced on the second inquiry held into the case by the sessions judge's order, has not legally been brought upon the record, and cannot therefore be admitted against them; and *secondly,* that even if it be admitted, it is altogether insufficient in itself to sustain the conviction.

It appears that the sessions judge, for the reasons stated in his remarks on the trial, directed the magistrate to make further inquiry and endeavor to ascertain from witnesses, who were independent of both parties, in which place Ram Lochun Nag had been wounded, whether at the house of Chunder Narain Nag when defending it, or in an attack upon that of Hur Mohun Roy. Mr. Norris urges that the sessions judge exceeded his competency in giving this order; that the order is inconsistent with the regulations and procedure of criminal courts; that it was the more objectionable because passed after the prisoners had been called upon for their defence, and the evidence to it had been recorded; and that as the judge could place no reliance on the evidence for the prosecution, the prisoners were *then* fully entitled to, and should have obtained, their acquittal.

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As regards this plea, I am of opinion that it is competent to the sessions judge at any stage of the trial before him to call for further evidence. If further evidence for the prosecution be required it should ordinarily be called for before the defence is taken, and if required for the defence, after the defence has been recorded; but there is nothing illegal or irregular in taking fresh evidence *before* closing the proceedings and taking a *futwa* from the law officer. Had the evidence been received *after* the *futwa* had been taken, the proceedings might justly have been open to the objection taken by Mr. Norris. *Vide* Nizamut Adawlut Reports, vol. 2, pages 404 and 481, but the *futwa* had not been taken.

The inquiry was instituted through the magistrate, the fresh evidence was first submitted to and taken by that officer, as required by Constructions 1104 and 1166; it was then taken by the sessions judge in the presence of the prisoners; and lastly the prisoners were called upon for a fresh defence. The order was therefore not only legal, but was executed in a regular and formal manner, and moreover was passed more with the view to benefit than to prejudice the prisoners. Had the result of the inquiry been favorable to the accused there can be little doubt that the sessions judge would have acquitted them. For the above reasons I overrule the first objection.

On the second point Mr. Norris submitted to the court that the evidence of the witnesses was discrepant and conflicting, and that it was not that of disinterested witnesses. He commented on the fact of their not coming forward till six or seven months after the occurrence to give their testimony, as carrying with it great suspicion and throwing discredit on their evidence.

The evidence appears to me to disclose the real facts of the case, and is, I think, impartial and good. It would seem that there were two riots; that the Nag's party had in the morning seized and carried off two ryots of the prisoners; that in the afternoon the prisoners went with an armed force to seize some of the ryots of the prosecutor's; that on their attacking the house of the prosecutor, they were resisted by the latter, and his men, also armed; that a fight ensued, and that the deceased fell into a tank, and was there wounded by a fish-spear. On this occasion the prisoners were, no doubt, the aggressors. I see no reason to distrust the fresh evidence because the witnesses maintained silence for so long a period; the riot occurred in the day time in a village, and was no doubt witnessed by hundreds of persons, but their opinions are not those of Europeans actuated by a proper public spirit. The latter would come forward and proffer their testimony; natives would, on the contrary, to avoid the harrassment of attendance at court, prefer paying a *douceur* to the police. The witnesses have deposed distinctly to the prisoners taking an active part in the riot, and the *alibi* set up by the prisoners has availed them naught. Concurring in the conviction, I reject the appeal.

PRESENT:

W. B. JACKSON, Esq. *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

RAM GOBIND NAIE AND GOVERNMENT *versus* NEELARAM NAIE.

MYMENSING.

1853.

February 28.

Case of NEELARAM NAIE.

The prisoner convicted of murdering the deceased who would not lend him money, sentenced capitally.

CRIME CHARGED.—Wilful murder of Jeetram Naie.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 27th January 1853.

Remarks by the officiating sessions judge.—It is on evidence that early in the morning of the 29th Kartick last, a quarrel took place between the prisoner and the deceased, who are cousins and who live together in the same house, regarding a loan of rupees 50, which the prisoner wished to borrow from the deceased, which ended in his attacking him with a large hoe *(khuntee)* on the head and sides of the chest, from the effects of which he died immediately.

The prosecutor, who is the son of the deceased, deposes that very early in the morning the prisoner came and asked his father for the loan of rupees 50, as he wished to go to Benares (Kashee), when his father replied that he had not the money to give him; that the prisoner then told him on his going out he would dig and see whether he had money or not; that shortly afterwards, as his father was going to witness No. 7's house, the prisoner commenced to dig up the floor of his house, when he returned and asked him the cause of this; that he then attacked him with the handle of the hoe on the head, and with a *moogdur* that he took from the veranda on the sides of the chest, and afterwards dragged him to a clump of plaintain trees, and returned, dug up the floor of the house and took away an earthen vessel, containing rupees 500, which was buried under ground; that the prisoner also eight days before the occurrence asked his father for the loan which he declined to comply with.

Witness No. 1, Ramkunth Naie, states that before daylight on the day in question, the prisoner had made a fire in the compound of his house, called him and his son, witness No. 2, and the deceased, who went to him. He then began to quarrel with him. On this the deceased and witness No. 2 left him; but witness and prisoner remained there. Shortly afterwards, on seeing the prisoner in a passion, he ran away to Dolegovind's house, and saw from that place the prisoner attacking the deceased with the hoe, which he had by him while sitting at the fire; that on seeing this he left Dolegovind's house through fear, and returned about a *puhur* afterwards, and saw the deceased lying by the plantain trees, the prisoner having then been apprehended; that he was not aware of the cause of the attack.

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He saw on his return that the floor of the house was dug up in several places, and heard from the prosecutor that the prisoner had taken away the money.

Witness No. 2 states, that the prisoner made a fire in the compound of his house early in the morning and called him, his father, witness No. 1, and the deceased. After going there he (witness) went to graze his cows and deceased was going to his cow-house with his *hookah*, when he saw prisoner quarrelling with his father, who went off to Dolegovind's house, and as the deceased came near the prisoner he saw the prisoner attacking him with the *khuntee*.

Witness No. 3 states, that he was roused from his sleep on the morning in question by witness No. 1 crying out that the prisoner was killing deceased; that he went there and saw the prisoner beating the deceased on the back and sides with the *khuntee*, and that he then dragged him to the plantain trees, but did not know the cause of the attack.

Witness No. 4 deposes to having run up from the zemindar's cutcherry when he heard of the matter, and that the prisoner confessed to having killed the deceased as they were taking him to the thanna.

Witness No. 7 states, that when he heard of the matter from witness No. 2, he went there, and saw the prisoner with a *dâo* and the *khuntee* in his hand, saying that he would kill any one who attempted to approach him or come to his house.

The evidence of witness No. 19 corroborates the above in all the material points.

The body of the deceased was sent into the station for medical examination by the civil surgeon, who deposed before me, on oath, that death was caused by severe injuries, *viz.*, a fracture of the skull, rupture of the spleen, and fractures of ten ribs (five on each side), and that any of these three injuries was sufficient to cause death; that there were also two small lacerated wounds on the scalp, which was severely bruised, and two bruises on the right shoulder; that after receiving such injuries he must have died immediately; and that the said injuries might have been produced by blows from either of the weapons* (shown to him in court); that the injuries must have been caused during life, and that there was no previous disease apparently except that the spleen was enlarged.

The prisoner in the Mofussil and in the foujdaree confessed to having attacked the deceased, but that he first abused and struck him, when he retaliated and struck the deceased with the *lattee*, but that the blow accidentally fell on his head; that he then gave the deceased some water to drink, and after his death dragged the body

* The *khuntee* or hoe was three and a half cubits long, six inches in circumference and four seers in weight. The *lattee* was three and three quarter cubits long, six inches in circumference, and two seers and thirteen chittacks in weight.

to the clump of plantain trees. The cause he ascribed to a dispute which arose about their respective shares.

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Case of NEELARAM NAIE.

In this court the prisoner confessed to having attacked the deceased with a *lattee*, and he admitted that his Mofussil and foujdaree confessions were correct, on their being read to him.

The *futwa* of the law officer convicts the prisoner of the crime charged, and declares him liable to the penalty of *kissas*.

Doubts arose in my mind on the trial whether the murder was not the act of a madman, from the determined manner in which he (the prisoner) carried into effect his object; but the witnesses deposed that he never had shown symptoms of insanity, and that he was perfectly sane when he committed the deed, although he had been ill with fever some time before.

It will be observed from the evidence of the prosecutor that he (the prisoner) wished to borrow rupees 50 from the deceased eight days before as well as on the day of occurrence; that he arose unusually early in the morning of the day of the murder; that a large hoe, measuring three and a half cubits long and six inches in circumference (a very ponderous weapon) was seen before the attack lying on the ground close by him as he was sitting at the fire; and that on completing the murder he dragged the body outside, and placed it amongst some plantain trees, and returned to dig up the floor of the deceased's house in search of money. All this shows that his object was to obtain money, and as he could not do so by fair means, he deliberately murdered his victim. I agree with the *futwa* as to the guilt of the prisoner; but, under all the circumstances, would recommend that he be imprisoned for life, with labor and irons, in transportation beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and A. J. M. Mills.)—MR W. B. JACKSON.—From the prosecutor's evidence, supported by that of three other witnesses, it appears that the prisoner had a dispute with the deceased, in consequence of his refusing to lend prisoner money; that he attacked and beat him severely, and killed him on the spot, fracturing his skull, and breaking ten ribs, five on each side, also rupturing the spleen. The prisoner confessed the crime before the magistrate and at the sessions. I convict the prisoner, Neelaram Naie, of the murder of Jeetram Naie, and would sentence him to suffer death.

MR. A. J. M. MILLS.—I concur with Mr. Jackson in the conviction of the prisoner Neelaram Naie, and in the sentence of capital punishment which he has proposed. The sessions judge states that the object of the prisoner was to get money, and as "he could not do so by fair means, he *deliberately* murdered his victim," and yet he recommends, under the *circumstances of the case*, a sentence of imprisonment for life. He should have put distinctly on record what those circumstances are. I regard the murder as deliberate and brutal, and without any extenuating circumstances. I see no doubt of the prisoner's sanity.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

JEEBUN KRISTO CHUCKERBUTTY AND GOVERNMENT.

versus

NEELMONEE CHUCKERBUTTY.

DACCA.

1853.

February 28.

Case of NEELMONEE CHUCKERBUTTY.

The prisoner was convicted of culpable homicide, and sentenced to imprisonment for three years, and to pay a fine of rupees two hundred in lieu of labor.

CRIME CHARGED.—Manslaughter.

Committing Officer, Mr. T. Tweedie, deputy magistrate of Moonsheegunge, Dacca.

Tried before Mr. H. T. Raikes, officiating commissioner, with powers of sessions judge, Dacca.

Remarks by the officiating commissioner.—There had been a dispute between the prosecutor in this case and the prisoner Neelmonee regarding the right of way in a foot-path along the bank of a small *nullah*, which, running through the village occupied by ryots of both parties, led direct to the prisoner Neelmonee's house. There had evidently been long-standing enmity between them even before that ; and on the day in question, when the prisoners were coming with four small boats along the *nullah*, escorting some idols to the prisoner Neelmonee's house, the prosecutor's son, Kristokoomar, together with Omakristo and Chunder Madhub Chuckerbutty, descended into the *nullah*, and Kristokoomar laid hold of the leading boat, in which the prisoners were, and told them to turn back. The witnesses swear that at this time Neelmonee took a spear from the hand of another person in the boat and struck the deceased with it in the lower part of the abdomen, and he fell mortally wounded. Ramkoomar at the same time speared Omakristo, who was foremost in the struggle ; and as Chunder Madhub was attempting to raise up Kristokoomar, Ramdyal (No. 5) told Mohun Singh (No. 10) to secure the body, Mohun Singh accordingly got out of the boat and attempted to take Kristokoomar from Chunder Madhub, and on Chunder Madhub refusing to relinquish his hold, Mohun Singh struck him with a sword on the arm. Although the eye-witnesses are partisans of the prosecutor, I saw no reason to doubt their version of the case to the above effect.

Besides the three prisoners mentioned, three others were committed as implicated by their acts, and the whole of them are charged with riot attended with wilful murder and wounding, and on a second count with being accomplices, aiding and abetting in the same.

The first point to be considered is, whether the prisoners were at the time actuated by one common illegal design, in the execution of which the deceased was slain, and the others wounded, as in that case they would all be equally culpable ; or whether the object of their assembling together, and of their subsequent proceedings, was in itself legal and blameless, and one to which opposition could not be reasonably expected ; as in that case, I consider only those who

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acted in an illegal manner can be made answerable for their own acts, the culpability of which would not be extended to others who are not proved to have taken any part in them.

It appears that the party to which the prisoner belonged, were escorting the idols to the house of the prisoner Neelmonee, and formed a procession for this purpose, some of them having weapons in their hands. Neither the procession itself, nor the proceedings of the prisoners in having arms in the hands of some of them, are at all unusual in this country, and the latter circumstance does not of itself justify a belief that opposition was expected, and the means of repelling it provided ; nor do I consider the dispute about the pathway affords sufficient ground for believing that the prisoners expected their procession would be interrupted, and that they were prepared to resist it. As far as the evidence goes, it would appear that the prosecutor's party were quite unaware of the prisoners' intention, and no preparations were made on his side to oppose them, neither is there any reason for presuming that the prosecutor's party had previously assumed any exclusive right to the *nullah* through which the procession was proceeding. The dispute to the foot-path on its banks had originated in the prosecutor's throwing earth thereon from some excavation he was making, and thus blocked it up ; and no objection was made even by the prosecutor to the pathway being used by individuals, but his objection applied to its being turned to more public purposes, such as processions like the present, or on occasions of marriages and deaths in the neighbourhood, but that such objection previously existed or had been known to the prisoners was by no means certain. I am induced to think then that the procession had a right to proceed on the route it was taking, and that no special malice actuated the prisoners in going there. I therefore acquit them of holding any common illegal design : and in this opinion the moulvee coincides with me.

The point on which I differ from the *futwa* is the crime proved against Neelmonee. The moulvee considered him guilty of murder because the weapon used was a deadly one. I am of opinion that no such malice existed on the part of the prisoner as to warrant a belief that he intended to slay the deceased ; or, although the weapon used was one quite calculated to inflict a mortal wound, that it was used on the present occasion with such a fatal intention. I therefore consider the crime only amounts to manslaughter, and would sentence him to three (3) years' imprisonment. Two prisoners were convicted of wounding and sentence recorded in accordance with the *futwa*, but postponed for the court's approval, and the remaining three were acquitted in concurrence with the finding of the *futwa*, nothing whatever being proved against them.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) —I concur in the view of the case taken by the officiating commissioner, and sentence the prisoner Neelmonee Chuckerbutty to imprisonment for three (3) years', and to pay a fine of rupees two hundred (200) in lieu of labor, within one month.

PRESENT :

W. B. JACKSON AND J. DUNBAR, } Esqrs., *Judges.*

KHOOSHAIE SHEIKH AND GOVERNMENT

versus

SUMEER GAZEE.

JESSORE.

1853.

February 28.

Case of Sumeer Gazee.

Conviction of the murder of the prisoner's wife; no extenuating circumstances. Sentence, death.

CRIME CHARGED.—Wilful murder of Dhon Bebee, the daughter of the prosecutor Khooshaie Sheikh, on the night of the 1st January 1853, or 19th Poos 1259.

Committing Officer, Mr. H. Rose, joint magistrate of Khoolneeah, Jessore.

Tried before Mr. R. N. Skinner, sessions judge of Jessore, on the 5th February 1853.

Remarks by the sessions judge.—The prisoner resides in the house of Arzan and his two sons Surroop and Tareep (witnesses Nos. 1 to 3). He left his home for some days, and on his return discovered that Arzan had misconducted himself with his wife. Witnesses heard him squabbling with her from time to time. After the lapse of a few days he cut her throat. Witnesses Nos. 1 to 3, hearing a gurgling noise, at six *dunds* of the night, called to the prisoner, who gave no answer. They hurried to his door and found him sitting on her head as she lay prostrate, with her throat cut and bleeding. He jumped up, threw down a *dâo*, and ran away. They pursued him and caught him about twenty *russees* off. The chowkeedar (Kumuruddi, witness No. 8,) and Aubdan Mollah (witness No. 4), as well as Bayoo and Warris, neighbours, came up hearing their voices and took prisoner, whose clothes they observed to be bloody, to his house, where they saw the deceased with her throat cut, and the *dâo* lying near her. Prisoner confessed to them that he had committed the deed.

The crime was committed on the night of 1st January; information was given by the said chowkeedar the next day at the thanna, fourteen miles off, and the following day, *i. e.*, 3rd January, the darogah arrived at the spot, held an inquest on the body, in the presence of witnesses Nos. 9 and 10; sent in the corpse; took the deposition of witnesses Nos. 1 to 4 and 6 to 8, and the confession of Sumeer, who again confessed before the joint magistrate on the 5th, stating that he had murdered his wife, at her own request, with a *dâo*, which she herself brought, on account of her being dishonored by Arzan and Surroop. The corpse was examined by the civil assistant surgeon on the 4th idem.

The prisoner denies the murder before me: but says he heard, on his return home, that Arzan had committed adultery with his wife, and accuses him; yet names no witnesses to his defence.

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February 28.

Case of SUMEER GAZEE.

The confessions before the police and the joint magistrate have been duly attested by subscribing witnesses. The assistant surgeon gives evidence that death must have been caused by the wound in the throat. The corpse has been duly identified; so has the weapon used.

The jury give a verdict of "*guilty*" of the crime charged in the calendar, *i. e.*, wilful murder.

I concur in that verdict, and I see no reason why the prisoner should not suffer the utmost penalty of the law.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and J. Dunbar.)—MR. W. B. JACKSON.—I convict the prisoner Sumeer of the murder of his wife, Dhon Bebee, on his own confession, and on the very strong collateral evidence which supports it; the prisoner alleges that his wife had been violated; but there is no proof of this; he seems to have been actuated by jealousy, but there is no ground for such jealousy shown. I would sentence the prisoner to suffer death.

MR. J. DUNBAR.—The evidence would have sufficed to convict the prisoner, even if he had not confessed. The voluntary confessions added to that evidence render the proof as strong as it could well be. I concur in the sentence of death.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

TEETOO GHOSE AND GOVERNMENT

versus

RAMMOHUN MOITRO (No. 6), PRANKISTO SIRKAR (No. 7), AZEER MEER (No. 8), AMEER SIRDAR (No. 9) AND HEEROO SINGH JEMADAR (No. 10).

NUDDEAH.

1853.

February 28.

Case of RAMMOHUN MOITRO and others.

The evidence for the prosecution being held to establish the fact that the prisoners took an active part in a riot attended with loss of life and wounding, the sentence of the sessions judge was confirmed on appeal.

CRIME CHARGED.—*Charge First.*—1st count, wilful murder of Eshwur Ghose; and 2nd count accomplices in the said crime.—*Charge Second.*—1st count, riot attended with the murder of Eshwur Ghose and the severe wounding and carrying away of Ram Soondur Ghose; and 2nd count, accomplices in the said crime.

CRIME ESTABLISHED.—Riot attended with the murder of Eshwur Ghose and the severe wounding and carrying away of Ram Soondur Ghose.

Committing Officer, Mr. C. F. Montresor, magistrate of Nuddeah.

Tried before Mr. J. C. Brown, sessions judge of Nuddeah, on the 16th December 1852.

Remarks by the sessions judge.—This was a riot attended with loss of life, which, according to the evidence, appears to have

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originated in a mistake. I am afraid the whole truth has not been told, although the law officer and I did our best to elicit it from the witnesses by cross-examination. The *futwa* of the law officer of this court gives a full and clear statement of the whole affair, in a most satisfactory manner. A man named Ram Soondur Ghose has been missing since the riot, in which it has been proved he was the first person wounded, and immediately removed no one knows where, and it is not known if he is alive or dead. There was a counter-charge brought at the thanna by Prankishto Sircar (prisoner No. 7) against the party to which the man killed and Ram Soondur Ghose, belonged, but that was proved unfounded, and was not followed up. Since disposing of this case, I have had some doubts in my own mind regarding the sentence I have passed on the prisoners, as being too lenient, and after some search for precedents, I have found one or two which appear to me to bear on the case, only the facts do not agree exactly. One was decided by the Nizamut Adawlut on the 5th of November 1839 and will be found at page 147 of the 5th volume of the Printed Reports, in which Thakoordoss Chuckerbutty and others were sentenced to imprisonment for life, as it appeared that a man had been killed whose body had not been since found, and he was last seen with the prisoners, on whom a violent presumption rested of having murdered him. In the case now under report there is no proof whether the man was killed or not, only that he fell wounded, was immediately removed, and has not been seen or heard of since. There was another case more like this, which was tried on the 13th of November 1806, page 121 of volume I., in which Bachun Gir and others were sentenced by J. H. Harington and J. Fombelle, Esquires, the principal to fourteen (14) years' and the others to seven (7) years' imprisonment each, for the crime of beating and maltreating Dabee Mohunt, he being missing ever since. Not having the first volume of the Reports to refer to, I cannot be certain of the grounds which led to those sentences, but have quoted them from the separate Index.

Sentence passed by the lower court.—Each seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Mr. Waller and Baboo Kishen Kishore Ghose appeared on behalf of the prisoners and commented severally on the evidence and the improbabilities of the case for the prosecution.

I concur entirely with the sessions judge in thinking that the whole truth has not been told in this case. That one man was killed however, and another wounded, is sufficiently established; and the prisoners are unable to show that these things came to pass in any other manner than that sworn to by the witnesses for the prosecution, according to whose evidence the whole of the prisoners were more or less active in the riot. I see no reason to interfere with the sentence of the sessions judge.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT
versus
JOODHISTEE DHOWREA BAGDEE.

HOOGHLY.

1853.

March 1.

Case of JOODHISTEE DHOWREA BAGDEE.

The prisoner convicted of having belonged to a gang of dacoits, sentenced to transportation for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 15th February 1853.

Remarks by the additional sessions judge.—The prisoner pleads "*guilty.*" He had made a confession of his guilt before the commissioner of dacoity on the 3rd of August, which was proved before me, and which the prisoner allowed before me that he had made; besides which his detailed confession to eighteen dacoities was called for, and his statement respecting the first three of them was proved before me, and allowed by the prisoner to be correct. He stated that he had belonged to three gangs, which had been led by Golamee Dome, Sudda Chundal and Madoo Bar; and the three dacoities which were detailed had taken place in the districts of Hooghly and Bancoorah. The prisoner had no defence to make, but acknowleged that he had committed eighteen dacoities in Bancoorah and Hooghly, and that Gomanee Dome, Sudda Chundal, Sunkur Chundal and Madoo Bar and Bero Dome, had been the leaders of three different gangs to which he had belonged. I therefore find him guilty of the crime with which he is charged, and propose that he be sentenced to transportation for life, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner confesses in the sessions court that he belonged to certain gangs of dacoits; he names the leaders and gives particulars of the several dacoities in which he was at various times engaged. I confirm the proposed sentence.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

RAKHAL BAGDEE SIRDAR.

HOOGHLY.

1853.

March 1.

Case of RAKHAL BAGDEE SIRDAR.

See preceding case.

CRIME CHARGED.--Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 11th February 1853.

Remarks by the additional sessions judge.—The prisoner pleaded "*guilty.*" There were two approvers, who stated that the prisoner had committed several dacoities with them in the districts of Burdwan and Hooghly; and he had confessed his guilt on the 6th of August 1852, before the commissioner for the suppression of dacoity.

There is a detailed confession of the prisoner to twenty-one dacoities, which the commissioner for the suppression of dacoity, and another witness, stated was made before them, and each page of which was signed by them. When the prisoner was called on for his defence he said that he had none to make; that he had committed about twenty dacoities, and that Nobin and Sistee and Gopal Doolye (witness No. 1) had been his leaders. I find him guilty of the crime with which he is charged, and propose that he be sentenced to transportation, with labor in irons, for life.

I have not thought it necessary to prove the confessions to the whole twenty-one dacoities, as it would not be acting analogously with Regulation XV. of 1814, Section II. Clause 3, to do so, and it would occupy very much time without any advantage to be gained by it.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) —The court convict the prisoner of the crime charged, and sentence him to be transported for life.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

MODHOOSOODUN SAHA TANTEE.

HOOGHLY.

1853.

March 1.

Case of MODHOOSO-DUN SAHA TATEE.

See preceding case.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 11th February 1853.

Remarks by the additional sessions judge.—The prisoner pleaded "*guilty.*" He had previously confessed the crime with which he is charged before the commissioner for the suppression of dacoity. On the 30th September 1852, and on the 28th, 29th and 30th of that month he had given a detailed account of nine dacoities in which he had been engaged, the account of the first three of which was proved in court. The prisoner when called on for his defence again acknowledged his guilt and said that he had committed five or seven or eight dacoities at Serampore and Bydbattee, and Nogong, &c., all in the district of Hooghly, under a leader called Teluk Bagdee, &c. I find him guilty of the crime with which he is charged, and propose that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The court convict the prisoner, Modhoosoodun Saha Tantee, of the crime charged, and sentence him to be transported for life.

PRESENT:
W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT AND RADHACHURN MUJOOMDAR

RAJSHAHYE.

1853.

March 4.

Case of KHYRAT KHAN and another.

The prisoners were acquitted on appeal, by the Nizamut Adawlut, on account of the untrustworthiness of the evidence for the prosecution.

KHYRAT KHAN (No. 4) AND MANICK KHAN (No. 5).

CRIME CHARGED.—Dacoity in the house of Radhachurn Mujoomdar, prosecutor, attended with the wounding of the prosecutor and Mathoo Sheikh, in which property valued at rupees 156-15-10, was carried off.

CRIME ESTABLISHED.—Accomplices in dacoity.

Committing Officer, Mr. F. Beaufort, officiating joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 10th January 1853.

Remarks by the sessions judge.—On this dacoity being reported by the chowkeedar, first the mohurir of the thanna and then the darogah proceeded to the spot, the latter reporting that the charge was a false one, and that the disturbance had arisen from the misconduct and *amours* of the prosecutor's two daughters, widows, residing at his house. The joint magistrate on this deputed his nazir to make a second investigation, and which he did, sending in the prisoners (together with five others who have been acquitted). The prosecutor and his servant, both before the mohurir and the joint magistrate, deposed that they recognized the two prisoners. Both beat the servant and one the master; and No. 5 had a *mussal* in his hand. Their being recognized was therefore very possible, and on the evidence to recognition I have convicted them both of being accomplices in dacoity, and sentenced them as stated. Three other witnesses deposed to recognizing the prisoners, but their testimony I reject, for the reasons given in Statement No. 8, of prisoners acquitted. The trial was held under Act XXIV. of 1843, and the Court's Circular Order of the 6th July 1844.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I am not satisfied with the evidence to the recognition of the prisoners Khyrat and Manick, at the time of committing the dacoity; they are stated to belong to the same village, and it is hardly probable that they should commit a dacoity in the house of their neighbour, and openly treat him with violence, with a *mussal* lighted accompanying them; the other circumstances of the case make me doubt the truth of the recognition, independent of its improbability. I acquit the prisoners.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

MUSST. BHOOSIA (No. 1) AND BHOOKHUN GOWALA (No. 2).

BEHAR.

1853.

March 4.

Case of MUSST. BHOOSIA and another.

The depositions of the prisoners not involving contradictory statements as charged, although they had probably perjured themselves, they were acquitted by the Nizamut Adawlut.

CRIME CHARGED.—No. 1, perjury, in having, on the 6th April 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the magistrate of Behar, that "date I do not remember, in the month of Cheyt, on Thursday, at two *ghurries* in the morning (about 7 o'clock A. M.), Byjnath Singh came up from Khalean, and kicked my husband twice, of which he died immediately after; that then Byjnath Singh had his corpse thrown into the well; that in my presence Byejun Singh, who is also called Byjnath Singh, beat him (the deceased) and that Byejun Singh is the sirdar (headman) and *ticcadar* of the village;" and in having, on the 2nd October 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said magistrate of Behar, in her supplementary deposition, that—"This is Byjnath, and his name is only Byjnath, he has been on a pilgrimage to Juggernath since the month of Kartick last; that he has not done anything; that that Byjnath Singh had absconded; this Byjnath is another person, and is not the *ticcadar* of my village and Shewlol Singh is the *ticcadar* of my village; and that this Byjnath Singh did not murder my husband;"—such statements being contradictory of each other on a point material to the issue of the case. And No. 2, perjury, in having, on the 6th April 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the magistrate of Behar, that —"In the month of Cheyt, date I do not remember, on Thursday, (to-day) being the fifth day, Byjnath Singh came from Khalean towards a *peepul* tree, and kicked my brother twice, and struck him on his head with a *lohangee*, on which my brother Bholee immediately died, when Byjnath Singh causing his hands to be bound behind his back, threw him down a well and then absconded;" and in having, on the 2nd October 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said magistrate of Behar, in his supplementary depositions, that (looking at Byjnath Singh)—"This person did not murder my brother, and that the name of the man who murdered my brother is Byejun Singh, he was the nephew of Shewlol Singh, and gomashta of mouza Larpore; that this Byjnath Singh is the *ticcadar;* he did not commit the murder; Byejun Singh committed the murder, and he has absconded; and that I do not know where his house is;"

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Case of Musst. Bhoosia and another.

—such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer, Mr. F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 24th January 1853.

Remarks by the sessions judge.—Musst. Bhoosia (prisoner No. 1) was prosecutrix and Bhokhun (prisoner No. 2) was witness in chief in the trials as per margin, printed at page 311 and sequel of Decisions for August 1852, both deposing to the wilful murder of Bholee Gwala, husband of the former, and brother of the latter, who was his fellow-sufferer in the oppression which ended in the murder. In these trials certain servants or retainers of Shewlol Singh, the leaseholder, were convicted and sentenced as accomplices in the murder. The murderer himself was thus deposed to by the two prisoners—"That on approaching the well they found Byjnath, the leaseholder's nephew, there; who, striking the deceased a blow on the head with a heavy stick, killed him on the spot, and then, to conceal the crime, caused the body to be thrown into the well."

Musst. Bhoosia Gwalin

In trial No. 4, Henna Dosadh (No. 3), and Achuraj Singh Rajpoot, (No. 4).
In trial No. 7, Boodhoo *alias* Bhoodhua (No. 11.)

Byjnath Singh continued a fugitive, as he had been previously reported in a case of affray* or riot attended with severe wounding, for which his uncle Shewlol Singh is a convict in jail, until, strange to say, apprehended by the police in his own dwelling on the 18th September 1852. Before the magistrate on 20th idem, simply declaring the accusation against him by Musst. Bhoosia to be false, he alleged, that he had only just returned from a pilgrimage, and was about to deliver himself up when apprehended by the police.

* *Trial No. 5, of Sessions for May* 1852.
Government
versus
Shewlol Singh and nineteen others, printed at pages 68 to 77, Decisions for July 1852.

On Byjnath Singh being confronted with the two prisoners before the magistrate on 2nd October 1852, both positively swore that he was not the person who had murdered the deceased. With their defection, as will be manifest from the original trials, no further evidence could be forthcoming against Byjnath Singh. The magistrate, after seeking the advice of the Remembrancer of Legal Affairs, acquitted Byjnath Singh, for want of proof of his guilt, and made over the two prisoners to stand their trial for the perjury thus committed by them as detailed in the indictment.

When the magistrate placed the two prisoners on their trial for this perjury, immediately on its commission both confessed that they had perjured themselves, and that the Byjnath, then present, was the person they had deposed to, as having murdered the deceased, and

1853.

March 4.

Case of Musst. Bhoosia and another.

that there was no other Byejun or Byjnath Singh. Before this court they pleaded "*not guilty*", at the same time urging that they had been tutored not to recognize Byjnath, to ensure his escape from the hands of justice, by Khoorshed Alee, vakeel, and another; singular, if probable as regards the former, who in the trial of Byjnath Singh's uncle, Shewlol Singh, above noted, was Shewlol Singh's declared adversary.

During the prisoners' trial before the magistrate there were several witnesses, Nos. 3 to 9, inclusive, who recognized Byjnath Singh as Shewlol Singh's nephew, which as many of them as attended again confirmed before this court.

The *futwa* of the law officer, laboring to show that both the prisoners' depositions might have been correct, as not necessarily contradictory of each other, and yet at the same time referring to their subsequent confessions acknowledging their error, which, under the Mahomedan law, was not criminal, acquits both prisoners.

According to such faulty reasoning any perjurer need only acknowledge his offence to escape the penalty of the law he has outraged. I necessarily differ from such a finding. Apart from the prisoners' confessions there is ample proof of their guilt. There can be no doubt of the identity of the person they accused as the murderer of Bholee Gowala. He could not possibly have been any other than the Byjnath Singh under trial before the magistrate; notwithstanding, as observed by the superior court on the trials above cited, page 317, August 1852, "that he has been named both as Byejun and Byjnath," because, according to both prisoners' original depositions, either before the police, the magistrate, or this court during the former trials, Byejun and Byjnath was acknowledged as one and the same person; as also on the same occasion, still further positively designated by them as the leaseholder Shewlol Singh's nephew. Byjnath Singh was necessarily absent before this court, but Choonee Lall (witness No. 1), and Narain (witness No. 2), *mookhtar*, the attesting witnesses to the prisoners' confessions, depose to their having personally recognized Byjnath Singh during the trial before the magistrate, as Shewlol Singh's nephew, which the witnesses generally, including the prisoner's own witnesses, also confirm, acknowledging that Shewlol Singh has no other nephew of either name.

The circumstances of the case from first to last are too glaring to admit of any doubt of the prisoners having perjured themselves in order to screen the influential principal, their master, whose servants or retainers have been already convicted and

"The mass of hearsay or exculpatory evidence forthcoming in a case like this, in which the oppressed is a low-caste *gowala*, or serf, and the oppressors his master and retainers, as to the deceased's having come to his death by throwing himself down the well, need occasion no surprise, and carries no weight in my mind, but the very contrary when found irreconcilable with attendant circumstances, as I, in like

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Case of Mussr. Bhoosia and another.

manner, view the numerous symptoms of tampering with the prosecution so as to mitigate the atrocity of the occurrence, and of which the prosecutrix's testimony is itself illustrative. Her depositions both before the police and the magistrate in the first instance attribute her husband's death to severe maltreatment only, which she specifically stated as being caused by kicks, cuffs, and blows alone, and it was not until questioned by the magistrate that she accused Byjnath Singh of having struck the deceased on the head with a heavy stick. It is vain to look for better evidence in such a case. The prosecutrix named other witnesses before the police, Oojai Gowala, Hensraj Gowala and Keydun Gowala, who there deposed on hearsay to the same set tale of the deceased's having thrown himself into the well, and even including Byjnath's absence from the village, as acknowledged by the prosecutrix herself before this court when she remarked "what was to be expected from serfs against their masters, and that she could not call any other witnesses." The village has been for many years past in the hands of Byjnath's family, and both himself and his uncle, Shewlol Singh, are notorious, violent and influential resident leaseholders and landholders in the neighbourhood."

sentenced as accomplices in the murder. The remarks already made by me in the original trials, as repeated in the margin, are alike corroborative though in no degree exculpatory of such damaging demoralization. I convict both prisoners of perjury, wilfully and deliberately made, to save a criminal and defeat the ends of justice, and in such a case it is impossible for me to recommend any award short of the highest legal penalty, *viz.*, each nine (9) years' imprisonment with hard labor, and, in the case of the female prisoner, suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The terms of the indictment are such as will not sustain a conviction for perjury: the charge is for perjury in making two contradictory statements on oath, *viz.*—*first*, that Byjnath committed certain acts of violence upon the deceased; and *secondly*, that the Byjnath in court is not the person who committed those acts; as these statements are not contradictory, and their being contradictory is the essence of the charge of perjury as laid, no conviction for perjury can be had on this charge: I therefore acquit both the prisoners and direct their release. I observe that the law officer has taken the correct view of the case. I have no doubt that the prisoners have committed perjury in making a false statement on oath, but this is not the perjury laid to their charge.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

MODOO MOOCHEE.

HOOGHLY.

1853.

March 8.

Case of MODOO MOOCHEE.

The prisoner, convicted of having belonged to a gang of dacoits, sentenced to imprisonment for life, in transportation beyond sea.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly.

Remarks by the additional sessions judge.—This prisoner pleaded "*guilty,*" and confessed before me to having committed about fifteen dacoities, under a leader called Beeroo Sirdar, Mussulman, in the districts of Baraset, Hooghly and Kishnaghur. He had confessed the crime with which he is charged on the 8th of October last before the commissioner for the suppression of dacoity, and having previously given an account of fifteen dacoities in which he had been engaged, which occupied some days to write, I did not think it necessary to prove more than three of them. When each witness was examined, the prisoner said that the witness had spoken the truth. I find him guilty of the crime with which he is charged, and propose that he be sentenced to be transported for life, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The court convict the prisoner of the crime charged, and sentence him to imprisonment for life, in transportation beyond sea.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

KYLASH CHUNDER TANTEE.

HOOGHLY.

1853.

March 8.

Case of KYLASH CHUNDER TANTEE.

See preceding case.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly.

Remarks by the additional sessions judge.—This prisoner pleaded "*guilty.*" There were two witnesses, who proved that he had confessed his guilt on the 3rd November 1852, before the commissioner for the suppression of dacoity, and two others who were present when he gave an account of forty dacoities at which he was present. I thought it necessary to have the account of only the first three read over in court before the witnesses who had attested it,

1853. March 8. Case of KYLASH CHUNDER TANTEE.

and who proved that it was made by the prisoner. They had signed each page of the whole. The prisoner had no defence to make. He allowed that he had committed thirty, or thirty-two, or forty dacoities in Hooghly, the 24-Pergunnahs, Baraset and Nuddea and Chandernagore, and that Nuffur and Bunomalee and Bachoo and Thakoordoss had been his leaders. I see no reason, from the manner in which he confessed, to have any doubt of his guilt, and consequently I propose that he be sentenced to transportation for life, with labor in irons.

I have not thought it necessary to prove the confession to the whole forty dacoities, as it would not be acting analogously with Regulation XV. of 1814, Section II. Clause 3, to do so, and it would occupy very much time without any advantage to be gained by it.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The court convict the prisoner of the crime charged, and sentence him to imprisonment for life, in transportation beyond sea.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

WOOMA CHURN HALDAR.

HOOGHLY. 1853. March 8. Case of WOOMA-CHURN HALDAR. *See* preceding case.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 18th February 1853.

Remarks by the additional sessions judge.—The prisoner was committed on his own confession to the crime with which he is charged, made on the 25th of August 1852, before the commissioner for the suppression of dacoity. When the trial began he pleaded "*not guilty;*" but as I had to call for records there was delay in disposing of the case, and when he was brought up on a second occasion he stated that he wished to plead "*guilty.*" He had on five different days of the month of August detailed ten different dacoities in which he had been engaged. I called for some of these cases, and find that there was a dacoity at Kankalee in 1851, as the prisoner stated, and that he was accused of having committed it. I cannot find the order by which he became a Government evidence, but it appears that he did give evidence against his fellows, and consequently it must be supposed that he was pardoned and the case cannot be allowed to tell against him. Another dacoity to which he confessed took place at Nobogong, near Chandernagore, in

1853.

March 8.

Case of WOOMA-CHURN HALDAR.

1850, for which crime no one was apprehended. The case for which he is supposed to have been pardoned appears to be the last in which he was engaged. It may be that he had reformed, or that other dacoits would not trust him.

There was no written tender of conditional pardon made to the prisoner under Circular Order, No. 247, of volume 2, as there should have been, and which, if it existed, I should affix to the record of this trial; but it appears by the evidence that such a tender of pardon was verbally made to the prisoner by the committing officer. When he was called on for his defence, the prisoner said that all his confessions were true, and that he was guilty. I therefore find him guilty, and propose that he be sentenced to transportation for life, beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The court convict the prisoner of the crime charged, and sentence him to imprisonment for life, in transportation beyond sea.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

KISHEN SURMAH

versus

RAMKANTH GARROW (No. 1), GOBIND GARROW (No. 2), CHATLAH GARROW (No. 3), BHOLANATH HODEE, CHOWKEEDAR (No. 4), FALGOONAH GARROW (No. 5, APPELLANT) AND GOBURDHUN MUNDUL (No. 6, APPELLANT).

MYMENSING.

1853.

March 8.

Case of FALGOONAH GARROW, (appellant) and others.

Conviction and sentence affirmed.

CRIME CHARGED.—1st count, Nos. 1, 2 and 3, burglary in the house of the prosecutor and theft of cash and property valued at rupees 394-12-0; 2nd count, Nos. 1 to 6, knowingly receiving and possessing rupees obtained by the said theft; 3rd count, Nos. 4, 5 and 6, accessaries after the fact to the said burglary and theft; and 4th count, Nos. 4, 5, and 6, privity to the above theft.

CRIME ESTABLISHED.—Nos. 1, 2 and 3, burglary, and Nos. 4, 5 and 6, knowingly receiving stolen property.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 14th January 1853.

Remarks by the officiating sessions judge.—The statement of the prosecutor is, that at the end of Assar last, a burglary was committed in his house at night, and a *lotah* containing rupees 393, which he had buried in the floor under a chest, carried off, together with some brass utensils; that he was much distressed when he found that so large an amount had been stolen; that he reported the affair

1853. March 8. Case of FALGOONAH GARROW, (appellant) and others.

to his neighbours, and was making inquiries with a view to obtain a clue to the theft, but having done so in vain, he was about to report it to the police, when he was met by prisoners Nos. 4 and 6 who brought him back, saying that they would make inquiries about it for him, and at the end of four days they gave up rupees 199, saying that they had recovered the amount from prisoners Nos. 2, 3 and 5. The prisoners Nos. 4 and 6 then reported to the thanna that his (prosecutor's) cows had destroyed the rice field of Nos. 2 and 3, and brought back a burkundauz (Beharee Singh, witness No. 19,) to the village to inquire into their complaint of trespass, to whom the prosecutor related all the particulars of the theft and of the prisoners having given rupees 199 to him; the burkundauz then began to charge them, when No. 6 gave up another sum of rupees 50 to one Ramshaha to be delivered to the prosecutor, and Ramshaha gave it to his (prosecutor's) son, and No. 4 also gave Ramshaha rupees 20 to give to the prosecutor, who took it from him. The burkundauz then took Nos. 2 and 3 to the thanna, and the mohurir repaired to the spot to make further inquiries, to whom also No. 1, gave a small part of a bamboo *(choonga)* containing rupees 20, which he dug up in a field near his house where he had buried it, and No. 5 also gave up rupees 20, as part of the stolen property. No. 1 when giving up rupees 20 to the mohurir confessed to the theft, saying that it was planned by No. 3, who enticed him and No. 2 to accompany him, saying he knew where the prosecutor kept his money; Nos. 2 and 3 also confessed before the mohurir to having committed the theft and obtained their shares in the same; Nos. 4 and 6 denied the charge, saying that they did not dissuade the prosecutor from reporting it to the thanna, No. 4 adding that the money he gave to the prosecutor was his own, and that he did so through fear. No. 5 also denied, saying that he had heard from No. 4 that Nos. 1, 2 and 3 had committed the theft, and that when they gave up the money to them (Nos. 4 and 6), he kept rupees 20 out of it which he gave up. Before the magistrate No. 1 confessed and admitted the confession he made at the thanna, and the others denied the charge—No. 2 urging that he confessed to the mohurir through the maltreatment of the prosecutor; No. 3 that he confessed through fear; No. 4 that he was about to report the theft to the police, and that the prosecutor had beaten and confined him, and after taking money from him denounced him to the police; No. 5 that the prosecutor gave him rupees 20 to induce him to inquire into the theft, and No. 6 that he had reported to the burkundauz that Nos. 1, 2 and 3 had committed the theft; that he inquired into it and gave prosecutor what he recovered, and that he was not originally charged but sent in as a witness by the police. In this court the prisoners denied the charge,—No. 1 urging that owing to maltreatment he gave up his own money; No. 2 that he never confessed; No. 3 that he confessed through maltreatment; No. 4 that he was present at the thanna and

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Case of FALGOONAH GARROW, (appellant) and others.

the money he gave up was his own; No. 5 that he did not confess in the Mofussil; No. 6 that he did not confess, but was making inquiries into the theft, and that he was not originally charged but sent in as a witness. The prisoners named witnesses to defence whose evidence however did not avail them. The jury upon the Mofussil confession of the prisoners as above described, the confession of No. 1 in the foujdaree court (which confessions have been verified in this court) and upon the general circumstances of the case, convicted Nos. 1, 2 and 3 of burglary, and Nos. 4, 5 and 6 of receiving stolen property, a verdict in which I concurred, as their Mofussil confession and No. 1's foujdaree confessions have been duly verified by the subscribing witnesses, and the giving up of the rupees as part of the stolen property by the prisoners, as set forth in column 11 of the calendar, has been proved by the witnesses therein named; and the plea of the prisoners that they gave up their own money from maltreatment has neither been borne out by the evidence nor by the circumstances of the case. There were some slight discrepancies in the earlier proceedings, which would at first sight lead to a doubt as to how the money could have been so cleverly stolen from the spot in which it was hid; but the theft is readily accounted for from the fact that prisoner No. 3 was formerly a servant of the prosecutor, and must have known well where the money was secreted.

Sentence passed by the lower court.—Nos. 1, 2 and 3, each, five (5) years' imprisonment, with labor and irons; No. 4, three (3) years' imprisonment, with labor and irons; and Nos. 5 and 6 each, two years' imprisonment, No. 5 without irons, but with labor, and No. 6 with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—Nos. 5 and 6 have appealed. The appeal of the other prisoners was rejected on the 25th ultimo, and I see no reason to interfere with the conviction of these prisoners It is founded on good and sufficient evidence, and the sentence is appropriate. I reject the appeal.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT
versus
KHOODEERAM BAGDEE.

HOOGHLY.

1853.

March 8.

Case of KHOODEERAM BAGDEE.

The prisoner, convicted of having belonged to a gang of dacoits, sentenced to imprisonment for life in transportation beyond sea.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. T. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 17th February 1853.

Remarks by the additional sessions judge.—The prisoner pleaded "*guilty.*" Two approvers said he was a dacoit attached to the gang of Ram Thakoor, and that they had committed dacoities with him ; besides which his confession before the commissioner for the suppression of dacoity that he was a dacoit was proved in court, as well as three detailed confessions of dacoities, the whole number which he had confessed to being fifteen. I therefore propose that he be sentenced to transportation for life, with labor in irons."

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) —The court convict the prisoner of the crime charged, and sentence him to imprisonment for life, in transportation beyond sea..

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT
versus
RUSSOOL MAHOMED SIRKAR.

RUNGPORE.

1853.

March 9.

Case of RUSSOOL MAHOMED SIRKAR.

The prisoner acquitted on a charge of perjury, the evidence for the prosecution going only to the extent of proving that the prisoner had made a certain statement before the magistrate, not that the statement was itself false.

CRIME CHARGED.—Perjury, in having, on the 17th December 1852, deposed, under a solemn declaration taken instead of an oath, before the officiating magistrate of Rungpore, that the present prisoner, Gholam Nubee, is not Gholam Nubee, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 22nd February 1853.

1853.

March 9.

Case of Russool Mahomed Sirkar.

Remarks by the officiating sessions judge.—The perjury alleged to have been committed is said to have occurred in a case No. 2, which was before the sessions court the preceding day. In it a person named Gholam Nubee was charged with having committed a breach of trust, in converting to his own use certain jewels deposited with him for safety, but the charge was not proven, and he was acquitted. Before the magistrate's court, upon the 6th of August 1852, Russool Mahomed, the prisoner on the charge of perjury, deposed, on affirmation, that he was called by Gholam Nubee, and at his request took an inventory of the jewels delivered over to his charge by Pano Bewa, &c. On the 17th of December 1852, he affirms before the same court that Gholam Nubee is not the Gholam Nubee who called him to write the inventory, and that he does not know him, whereupon the magistrate committed him to the sessions.

Before the sessions court he pleaded "*not guilty.*"

For the prosecution upon the part of Government four witnesses were summoned :—

Buranoollah, witness No. 1,—Swears to the deposition of Russool Mahomed before the magistrate on the 17th of December 1852, in which he denied the person of Gholam Nubee as the Gholam Nubee he alluded to in his former deposition.

Madarbuksh, witness No. 2,—Gives the same evidence as Buranoollah.

Ramlochun Peada, witness No. 3,—Deposes to the denial of Gholam Nubee, with whom he is well acquainted, both as prisoner in the breach of trust case, and also as a resident of that part of the country.

Khodabuksh, witness No. 4,—Gives the same evidence; heard the denial of the person before the magistrate, and is well acquainted with Gholam Nubee.

Defence.—In his defence the prisoner attempts to prove that the Gholam Nubee who summoned him was quite a different sort of person from the prisoner in the breach of trust case, and for that purpose four witnesses are summoned.

Badeah, first witness,—States that he was in the bazar when a person called the prisoner Russool Mahomed to write a list ; but he does not know the name of that person, who neither was asked his name nor stated it.

Fuqeer Mahomed, second witness,—Was present in the bazar when a person called the prisoner to write a list ; that the prisoner before him inquired who he was ; and that he said before Badeah (witness first for the defence) that he was Gholam Nubee. The person was of a fair complexion.

Fyzoollah, third witness,—Gives the same evidence as Fuqeer Mahomed. Badeah was present when the man stated that his name was Gholam Nubee.

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Imambuksh, fourth witness.—Saw the person address the prisoner, but does not know who he was or anything about him.

The law officer considers the charge not proven ; but I differ. It is very clear that the prisoner deposed on the 6th of August to the circumstances of the case, with a view to criminating the said Gholam Nubee then and there present, in the breach of trust case ; and that, for reasons best known to himself, he entirely changed his plans, and on the 17th December refused to recognize, and denied the person of the man whom he had previously acknowledged. There can be no doubt of this being the relation of Pano Bewa, and the only Gholam Nubee who could have anything to do with the other case. The defence breaks down. Two of the witnesses state that a man calling himself, in answer to the inquiries of the prisoner, Gholam Nubee, called him away, and that the third witness, Badeah, was present and must have heard the inquiry. Badeah states that no inquiry was made as to the man's name ; nor did he state it ; and the fourth witness knows nothing to the purpose.

Under the circumstances of the case, I recommend the prisoner for three (3) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) —The commitment in this case has been made on utterly insufficient grounds. The prisoner on the 6th August, deposed that he had been called by one Gholam Nubee to write an inventory. On the 17th December he was again questioned, and on being asked whether he should know the said Gholam Nubee, were he to see him, he replied in the affirmative. A certain Gholam Nubee being then shown to him, he said that was not the person he meant, upon which the magistrate committed him for perjury. The evidence offered for the prosecution was simply to prove that the prisoner had given the said deposition and denied the identity of the Gholam Nubee shown to him in court ; not an iota of evidence is brought forward to show, that the Gholam Nubee produced in the magistrate's court, was actually and really the person who had summoned the prisoner to write the inventory ; and for all that appears on the record, there is just as much reason to conclude that the prisoner told the truth, as that he intentionally and falsely denied knowledge of a person well known to him. I acquit the prisoner, and direct his immediate discharge.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

ROOPDASS TANTEE AND GOVERNMENT

versus

NUFFER LOHAR (No. 10), MOORALEE LOHAR (No. 11), GHOLAM LOHAR (No. 12), SARUTHEE LOHARNEE (No. 14) AND MOTEE LOHARNEE (No. 16).

WEST BURDWAN.

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Case of NUFFER LOHAR and others.

One prisoner acquitted, conviction altered and sentence reduced as regarded others. The insufficient preparation of the calendar commented upon.

CRIME CHARGED.—1st count, Nos. 10 to 12, dacoity in the house of the prosecutor, on the night of 25th of July 1852, corresponding with 11th Sawun 1259 B. S., and plundering therefrom property valued at rupees 594-12-0, attended with the slight wounding with a *tulwar* of Tarachand Doss, nephew of the prosecutor; 2nd count, knowingly receiving and having in their possession property obtained in the said dacoity; 3rd count, No. 14, being privy to the aforesaid dacoity; and 4th count, Nos. 14 and 16, knowingly receiving and having in their possession property obtained in the said dacoity.

CRIME ESTABLISHED.—Nos. 10 to 12, dacoity in the house of prosecutor and plundering therefrom property valued at rupees 594-12-0, attended with slight wounding with a *tulwar* of Tarachand Doss, nephew of the prosecutor; No. 14, privy to dacoity before and after the fact; and No. 16 knowingly receiving and having in her possession property obtained in the said dacoity.

Committing Officer, Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 3rd January 1853.

Remarks by the sessions judge.—This dacoity was committed within a short distance of the Sonamookhee thanna, when the darogah and mohurir both happened to be absent on duty. There was nothing remarkable about the deed itself, except that the wound received by the nephew of the prosecutor, witness No. 20, though slight, was in a most dangerous place, *viz.*, just over the large arteries of the neck.

The robbers were followed in different directions by the darogah and mohurir, next day. The latter went as far as Puchal within the borders of Bishenpore jurisdiction, when the phareedar, Gopaul Misser, burkundauz (witness No. 5) gave him a list of *budmashes* residing in the neighbourhood; informed him that the prisoners Nos. 10, 11 and 12, had been absent on the night of the dacoity, and that the house of the female prisoner Motee (No. 16), mother of those enumerated, was likely to be the receptacle of the stolen property.

The mohurir who was accompanied by Mohun Paul (witness No. 7), a relative of the prosecutor, thereupon proceeded to Binode

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Battee, which is about four *coss* from the prosecutor's house, and searched the huts of the prisoners Nuffer (No. 10), Mooralee (No. 11), Gholam (No. 12) and Motee (No. 16), all of which were in the same *enceint*, in the presence of Nuffer, Motee and the wives of the other male prisoners, when a number of the stolen articles were found sewn up in an old pack-saddle, and hidden about in various places. Nuffer and the property were then removed to the neighbouring village of Urjoonpore, and notice was forwarded to the darogah, who with the prosecutor, immediately joined the mohurir. Mooralee (No. 11) and Gholam (No. 12) were shortly afterwards apprehended and sent in to the deputy magistrate, with Nuffer (No. 10), and property found in their habitations. The hut of Bhowanee (No. 15) was afterwards searched by the mohurir, and that of Jadoo (No. 13) by the darogah, and certain articles found. The residences of other persons in the phareedar's list were also searched by the darogah, and much property extracted therefrom.

The prosecutor declared all the property taken out of the houses of prisoners Nos. 10, 11, 12, 13, 15 and 16, and also some of that discovered in those of the other persons, above alluded to, to be his; but the latter succeeded in proving, that the articles in their possession were their own property, and the deputy magistrate, therefore, ordered their release.

After the above prisoners and property had been sent in to the deputy magistrate, the darogah sent for Musst. Saruthee, wife of the prisoner Nuffer (No. 10) and those of his brothers Mooralee and Gholam, and pressed them to point out more property. It appears from the evidence that improper promises of immunity to themselves or their husbands, must have been made to them by the darogah. The wives of the prisoners Nos. 11 and 12 denied all knowledge, but Musst. Saruthee confessed orally, that her husband and his brother had committed the dacoity; that she had been privy to the same, both before and after the fact; and that she knew the places in which certain articles, which she enumerated, had been deposited.

This oral confession took place very late in the evening, and the darogah proceeded to make search at once, by lamp-light, when the property mentioned by Saruthee was found. It was not quite clear whether she took the several articles out of the places in which they had been hidden, with her own hands, but her written confession, which was taken immediately afterwards, was to that effect, and it was sufficiently clear that she pointed out everything she had enumerated.

Saruthee's confession before the deputy magistrate, left out the prisoner Gholam (No. 12,) omitted her own previous privity, and was not so full as her Mofussil one, but her reticence was obviously intentional, and the substance of what she said was the same as before.

The *sooruthal*, the apprehension of the prisoners, the confessions, the finding of the property and the general circumstances of the case, were supported by sufficient evidence.

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As a very considerable portion of the property consisted of clothes and brazen utensils, I took great pains to ascertain whether the witnesses to identity spoke from actual acquaintance with the same or not, and their evidence with regard to the property found in the houses of the prisoners Nos. 10, 11, 12, 14 and 16, was, on the whole, satisfactory.

That having reference to the articles found in the houses of the prisoners Nos. 13 and 15, did not appear to me to be sufficient.

The prisoners all pleaded "*not guilty.*" Their defence was as follows:

No. 10, Nuffer, declared that he had found the old pack-saddle in the jungles; that he was not aware of its contents; that his house had been searched in his absence; that some *tusser*, silk and thread, found just outside of it, was not his; that the said articles had been placed where they were and others introduced into his hut, by the police; that the mohurir of the thanna had tutored the witnesses; that the residual property, and particularly the brazen vessels, were his own by purchase and exchange, of which he could not recollect the dates; that his wife's confession was false; that he knew nothing of the articles she had pretended to point out; and that many of the things, taken out of his house, had not been restored to him.

No. 11, Mooralee, denied complicity in the dacoity; affirmed that the brazen utensils found in his house were his own; and that the pharcedar had denounced him, because he had refused to let him purchase a cow for rupees 2 which was worth 10.

No. 12 made the same defence.

No. 13 said, that he had received the things found in his house in exchange for a goat, with the exception of a silver button, which he had picked up in a river bed near the village of Chabra, and that he had hidden the articles away, because he was in the habit of leaving his house unguarded, when engaged in labor.

No. 14 retracted her confessions, and said that she had made her Mofussil one because Puddoo Sirdar beat her.

No. 15 said that the *chuddur* and *mirzae*, found in his hut, had been given him by his sister; and a silver *madoolee*, or amulet case, and a cloth, by his nephew.

No. 16 said that she knew nothing of any dacoity; that the brazen utensils found in her possession were her own; and that she was in the habit of wearing the *doputtah*, edged with red *saloo*, and the red-edged *chudder*.

The witnesses named by the prisoners Nos. 10, 11, 12 and 16, did not support their allegations, but those of Nos. 13 and 15 did, in some degree, bear out what they stated, though not in the most satisfactory manner.

As the confessions of the prisoner Musst. Saruthee (No. 14), who is the wife of Nuffur (No. 10), implicated that prisoner, together with Mooralee and Gholam (Nos. 11 and 12), who are his brothers and

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live in the same *enceint;* as the property found in their houses, part of which was peculiar and easily recognizable, had been satisfactorily identified; as they had been absent from home on the night of the dacoity; and as their defence was futile; I convicted them as per the first count, on full legal proof, and sentenced them as noted.

As the prisoner Musst. Saruthee (No. 14) confessed privity, both before and after the fact, in the Mofussil, and did not deny privity before the fact when she repeated her confession in the presence of the deputy magistrate, and as she pointed out a considerable portion of the stolen property, which was fully identified by the prosecutor and his witnesses, I convicted her of privity to the crime charged in the first count, both before and after the fact, and sentenced her as noted.

As the property found in the house of the prisoner Musst. Motee (No. 16), living in the same *enceint* with the other prisoners above enumerated, had been satisfactorily identified as that of the prosecutor, and she could not prove the same to be hers, I considered the crime charged in the second count fully proven against her, and sentenced her as noted. I considered three (3) years' with slight labor, a sufficient sentence for a woman of the prisoner's great age, *viz.*, seventy (70) years.

I did not consider the evidence, in identification of the articles found in the houses of the prisoners Nos. 13 and 15 sufficient, and therefore ordered their acquittal and release.

I at the same time directed that the conduct of the darogah, in making improper promises to Musst. Saruthee, to induce confession, should be brought to the notice of the officiating joint magistrate.

Sentence passed by the lower court.—Nos. 10, 11 and 12 each, ten (10) years' imprisonment, with labor in irons, in banishment, and two (2) years more in lieu of stripes, also with labor in irons, total twelve (12) years' imprisonment, with labor and irons, in banishment. No. 14, five (5) years' imprisonment with labor suited to her sex, and No. 16, three (3) years', with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—Great want of care is shown in the preparation of this calendar. No less than six prisoners are charged with receipt of plundered property numbered from Nos. 1 to 77. The calendar does not exhibit each article of property produced from the several prisoners' houses with the number attached to it, so that, but for their admissions that the property was found in their houses, no conviction, upon the strength of the evidence, could be had. It is not enough that the record states, that a certain witness deposed to "all this property" being produced before him or recognized by him. The property and the witness being before the sessions court, the judge is enabled to satisfy himself, but in appeal, the court has not this advantage, and therefore, when a witness swears that a *battie* or *ghuttee*, a *kuttora* or *thalee*, was produced and recognized, unless

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the number of that particular article be attached to it, this court has no means of comparing the evidence and testing its truth. Every precaution should be taken to specify the property produced from each prisoner's house, to number it, and to indicate in the prescribed column, the party before whom it was produced or recognized, otherwise it is impossible to distinguish one *thalee*, one *lotah*, or one *ghuttee*, from several other similarly named articles of daily use ordinarily found in native huts.

For the purposes of this case it so happens that the prisoners admit, except in two instances, the production of the property and claim it. No. 10 acknowledges that property Nos. 1 to 6, was taken out of a bag in his house; the bag he claimed, but could not account for the property (three *lorees* amongst it) which it contained; he also claimed property numbered 7, 10, 11, 12, 14, 15, 16, 17, 18, 19 and 20, as his own, but the witnesses he cited to prove the fact depose that they know none of his property, while the prosecutor's witnesses swear to the whole of it.

Nos. 11 and 12, also admit the production of property and claim it, but fail altogether in proving their claim by the evidence of the witnesses for the defence. No. 14 is wife of No. 10; she confessed before the police and the joint magistrate, that her husband had gone to Sorra Mokhee to commit a dacoity. She produced a silver *hanslee*, No. 35, from the thatch of their house, and some silk, worth seven rupees, No. 21, from the top of the wall under the thatch. She has not been convicted of receipt of plundered property knowing it to be such, but of privity to dacoity. No. 16 is a very old woman, 70 years of age, mother of the prisoners Nos. 10, 11 and 12. She lives in a separate house within the same compound with them. She denies all knowledge of the property, and it is most probable that she was ignorant of its being there. She is acquitted and released. I convict the prisoners Nos. 10, 11 and 12, of receipt of plundered property, knowing it to be such, and sentence them each to seven (7) years' imprisonment, with irons and labor. Prisoner No. 14 is convicted of privity to the dacoity. In her confession before the magistrate, she admits that Nos. 10 and 11 brought some of the property which they concealed in a heap of straw the day after the dacoity; the *hanslee* and other property they concealed in the thatch and elsewhere. She is sentenced to two (2) years' imprisonment, with labor suited to her sex.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND MUSST. SUTNEE

HAZAREE-BAUGH.

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Case of BHALOO and others.

Conviction and sentence affirmed by the Nizamut Adawlut.

BHALOO (No. 8), BHOOPUT (No. 9) AND MUNNOOA (No. 10).

CRIME CHARGED.—No. 8, wilful murder of Juggoo, husband of the prosecutrix, and Nos. 9 and 10, accessaries to the crime after the fact.

CRIME ESTABLISHED.—No. 8, culpable homicide, and Nos. 9 and 10, accessaries thereto after the fact.

Committing Officer, Captain W. H. Oakes, principal assistant to agent Governor General, Lohurdugga, Hazareebaugh.

Tried before Major J. H. Hannyngton, deputy commissioner of Hazareebaugh, on the 13th January 1853.

Remarks by the deputy commissioner.—The deceased, one Juggoo Bhogta, had gone in company with one Machunder Bhogta by night, on the 29th October, to steal grain from a field belonging to the prisoner No. 8. It happened that the prisoners Nos. 9 and 10, were watching for game in the neighbourhood of the field, and there being bright moonlight they saw and apprehended the deceased, and then called the prisoner No. 8, who came and struck the deceased several blows with a stick, so that he died on the spot. The prisoners then carried away the body and concealed it in the jungle. No information was given to the police till the 11th November, when the mother of the deceased appeared before the principal assistant, and stated the facts nearly as above, saying that Machander Bhogta was her informant. She further stated that the body of the deceased had not been found. Upon this, the darogah, being deputed, reached the ground on the 12th November, and learned that before his arrival the body had been discovered, and by the evidence on the inquest it was fully identified. The facts above stated were confirmed by the evidence of Machunder Bhogta, and by the repeated confessions of the prisoners Nos. 9 and 10; and many witnesses proved that when a number of the villagers attracted by the outcry came towards the field, they were turned back by the prisoner No. 8, who said that it was nothing, only a thief who had fled.. The prisoner No. 8, in his defence said, that he had come with many persons on hearing the out-cry and had returned with them, the thieves having fled. Several witnesses on his part spoke to this effect. The prisoners Nos. 9 and 10, beyond denying their confessions, made no substantial defence. The jury found the prisoner No. 8, "*guilty*" of culpable homicide and Nos. 9 and 10, as accessaries thereto after the fact. In this I concurred, and sentenced the pri-

soners as shown. The prisoners Nos. 9 and 10, might perhaps have been charged as principals, for they were doubtless *present;* but their offence did not begin till the homicide was completed, and hence to hold them as accessaries appears to be not incorrect.

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Case of BHALOO and others.

Sentence passed by the lower court.—Each, two (2) years' imprisonment, without irons, and a fine of rupees twenty-five (25) or labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —On perusal of the record, I find no cause to interfere. The order of the deputy commissioner is accordingly confirmed.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

LUCHMAN MISSREE.

HOOGHLY.

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Case of LOCHMAN MISSREE.

The prisoner was convicted of having belonged to a gang of dacoits. As there was reason to presume that he was not a hardened offender, he was sentenced to imprisonment for ten years, with labor in irons.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 18th February 1853.

Remarks by the additional sessions judge.—It appears by the records of the court of the magistrate of Hooghly that a man of the same name as the prisoner, sent thanna by thannna from Hooghly to Benares as a bad character, but a prisoner called Sreenath Dutt having confessed to being a dacoit, on the 21st June 1852, and related an expedition in which Luchman Kota was engaged with him, the commissioner for the suppression of dacoity, on the 12th of July 1852, sent to Benares and had this prisoner sent to him; and it is shown by the evidence of witnesses that this is the same man as had previously been sent out of Bengal.

Before me the approver, Sreenath Dutt, stated, that this prisoner, whom he knows by name, went forth on an expedition to commit dacoity with him and eight or ten other persons; that they were in the same boat together for about ten days; and that they together committed a dacoity on a boat in the Assasonee River. There is, however, no other evidence that the dacoity ever took place, and there is not the full amount of evidence which is generally required by the laws of this Government, that any overt act was ever committed by the gang while the prisoner belonged to it, and when a prisoner pleads "*guilty*" to such a crime as this, it becomes a matter of consideration whether it is not necessary to prove that some overt act was committed by the gang during the time that the prisoner belonged to it, which would tend to identify him with

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the gang. According to the spirit of the letter of the register of the court to the additional sessions judge of the 24-Pergunnahs, No. 392, dated 14th April 1848, it would be necessary to prove some overt act.

On the 8th of September the prisoner confessed before the commissioner for the suppression of dacoity, that he went forth with a gang of dacoits who committed a dacoity on a boat, and again on the 1st of November 1852, he acknowledged that he belonged to Sreenath Dutt's gang which committed the dacoity which he had previously described. Now in cases of murder, it is not usual to convict on confessions, unless the murder is proved by the finding of the body, and if this rule is extended to other crimes, this prisoner should not be convicted of the crime of dacoity only on his confession, and much less should he be convicted of the crime of belonging to a gang of dacoits, owing to his confession to having committed one dacoity with a gang, when there is no other sufficient evidence that the dacoity ever took place.

The prisoner is a native of Benares, and his confessions are written in Bengalee. The witnesses give different statements respecting the language in which the confessions were made. It is not probable that he confessed in Bengalee, or in broken language, as some witnesses say he did. It cannot be shown how long he has resided in Bengal, but some witnesses state that he knows Bengalee and can speak it. The commissioner states that the prisoner told him that he had been many years in Bengal, and that he had heard him converse in the Bengalee language, and that he spoke it well. In a former case in which he was in prison, his confession was taken by the police in Bengalee, but the probable reason was that they could not write Hindoostanee. The defence in that case made before the magistrate was written in Hindoostanee, and there can be no doubt, but that the confessions in this case were written in a language which is not best understood by the prisoner, as should have been the case.

The prisoner was sent off to Benares from Allipore, on the 31st May 1852, having come from Hooghly on the 26th May 1852. The approver Sreenath Dutt had not seen him when he was then at Hooghly; but when Sreenath afterwards, on the 21st of June 1852, was making a confession, he stated that this prisoner had been out on a river dacoity expedition with him. The prisoner was sent for from Benares, and arrived at the court of the commissioner on the 25th of August, and on the 8th of September and 1st of November, he twice acknowledged, in depositions which I believe he understood, that he was engaged in the dacoity. A man called Jadoo Malla who has been transported for life, gave evidence on the 25th of August before the commissioner for the suppression of dacoity, and stated that he had committed river dacoity with the prisoner, and this deposition has been proved by a man who was

present at the time, and it is filed with the record. The case requires much consideration; but it is highly improbable that as Sreenath Dutt had committed thirty or forty dacoities, he should have invented one in order to have accused this prisoner of being engaged in it, or that he should have accused a man with whom he was not acquainted. I believe that the prisoner is guilty of having belonged to a gang of dacoits; and consequently I propose that he be sentenced to transportation for life, with labor in irons.

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Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) Proof of some overt act committed by the gang during the time the prisoner belonged to it, in order to identify him with the gang, however desirable, is not absolutely necessary under the law. According to Section I., Act XXIV. of 1843, whosoever shall be proved (in any way) to have belonged to a gang of dacoits, is liable to the punishment therein laid down. Whether the particular dacoity referred to in this report did, or did not occur, the evidence of Sreenath Dutt, and the confessions of the prisoner, corroborated by the confession and evidence on oath of Jadoo Malla, are sufficient to establish the fact, that the prisoner did associate himself and go forth with certain persons with the purpose of committing dacoity. I see no reason, however, to doubt the fact of the dacoity, although no record of it is to be found. Many persons travelling by water would submit to loss, rather than to the delay which must necessarily be the consequence of lodging a complaint before the police. There is nothing either in the statements of Sreenath Dutt and Jadoo Malla, or in the confessions of the prisoner to induce a belief that he is a hardened offender; there is, in fact, reason to presume that he never was engaged in any dacoity, save that to which he confessed. Under these circumstances, I am of opinion that a punishment of less severity than that proposed by the sessions judge, will suffice. I accordingly sentence the prisoner to be imprisoned for ten (10) years, with labor in irons.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND GOPAL SAHOO *versus* BHUJJOO.

SARUN.

1853.

March 10.

Case of BHUJJOO.

The conviction of highway robbery against the prisoner was confirmed.

CRIME CHARGED.—Highway-robbery by snatching property valued at rupees 5-8-0.

CRIME ESTABLISHED.—Highway-robbery by snatching property valued at rupees 5-8-0.

Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 13th December 1852.

Remarks by the sessions judge.—The prisoner tried in this case is proved to have enticed away a little boy of six years of age (nephew to the prosecutor) into a field of *mukai*, by promising to give him some fruit, and then to have robbed him of a gold ear-ring. Two persons who were near at hand, however, hearing the child's cries, came up and identified the prisoner when making off, and the thing being duly reported, he was taken up, when he restored the ear-ring, and gave out both to the police and to the magistrate that he had taken it by way of a joke. On his trial here he declares that he never took it at all, and that the whole story is false, and has been made up against him by the prosecutor in order to get off paying rupees 5 he owes him for the price of some oil; but the crime has been fully established, and as the moulvee also convicts the prisoner and holds him liable by *tazeer*, I have in concurrence with his *futwa* sentenced him as noted in the preceding column.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—No further orders necessary. The prisoner was seen by the witnesses in the act of robbing the boy, on whose breast he was seated, and tearing the ornaments off the boy's ear.

PRESENT:

W. B. JACKSON, AND J. DUNBAR, ESQRS., *Judges.*

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT AND BHOWANEEPERSHAD DEB

versus

JUGGERNATH MISTREE, ALIAS JOGAH (No. 5), JOOGUL MISTREE (No. 6), KISHOREERAM MISTREE (No. 7), NARAIN MISTREE (No. 8) AND MUSST. KOSHELAH (No. 9).

SYLHET.

1853.

March 11.

Case of JUGGERNATH MISTREE, *alias* JOGAH and others.

Murder of a gomashta from revenge, by strangulation or suffocation in a grave prepared for the purpose, by a man and his three sons; sentence on the two elder sons, death, on the father and a younger son, transportation for life, as they appeared to have taken a less active part in the crime: the mother considered as accessary after the fact for having set fire to the house in order to conceal the murder.

CRIME CHARGED.—1st count, Nos. 5 to 8, wilful murder of Sheebram Deb; 2nd count, Nos. 5 to 9, privity to the said murder; 3rd count, aiding and abetting in the said murder; and 4th count, No. 9, arson, with the intention of concealing the said murder.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 5th February 1853.

Remarks by the sessions judge.—From the evidence adduced before this court, it appears that Sheebram Deb was the gomashta and relation of the prosecutor, and had occasionally reprimanded the prisoners Juggernath and Joogul for their irregular lives. That on the night of the 2nd Magh, the prisoner Joogul came to Sheebram's house and told him he wanted him, and that they went away together in the direction of the prisoner's house. About two hours after dusk two of the prisoner's neighbours, Horishram Mistree and Benye Pal, heard groaning in the prisoner's house and asked what was the matter, but received no answer. They lighted a lamp therefore, and went together to the eastern house; but the prisoner Joogul came out and knocked the light out of Benye Pal's hand, and almost immediately the prisoner Musst. Koshelah came from the house to the north, and set fire to the eastern house. On seeing this the witnesses raised a shout, and the neighbours came up and extinguished the fire, and they all distinctly recognized the four male prisoners as they quitted the house.

On entering and examining the house, the neighbours discovered a grave, or hole, described as about one *hath* broad, two long, and two deep, which was covered over with a mat. Under the mat was a board, with five or six bamboos laid upon it, and under the board was the dead body of Sheebram, lying amidst mud and water; and the civil surgeon deposes that his death was caused by suffocation.

The prisoner Juggernath in the Mofussil and before the magistrate declared the prosecutor had instigated the murder, and that it

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had been perpetrated by the witnesses; but before this court he made no defence, and called no witnesses, alleging that the whole case was a conspiracy against him.

Narain Mistree stated in the foujdaree and before this court that he was in the house of Brijooram witness, and only went to his own house on hearing the cry of fire; but this Brijooram denied; and he called no other witnesses.

Joogul stated in the foujdaree that he was in the house of one Deioram, but could not prove it; and he made no defence whatever before this court.

Kishore stated in the foujdaree that he was with his father in Brijoo's house; but he called no witnesses to the fact, and before this court he made no defence whatever.

Musst. Koshelah stated that she slept in the northern house, and came forth on hearing the noise outside; but she called no witnesses to her defence.

Although there are no eye-witnesses to the perpetration of the murder, there can be no doubt that it was effected by the four male prisoners; and it is probable that they tumbled the deceased into the grave, which was half full of mud and water, and then, putting the board over him (for the board very nearly fitted the grave), stood upon it till he was suffocated. The prisoner Kishore is very young, being scarcely more than fifteen or sixteen; but his youth will not exempt him from punishment.

The prisoner Koshelah was evidently acquainted with the murder and set fire to the house with the view of concealing it, and from this circumstance she is proved to be an accessary after the fact.

Convicting the four male prisoners Juggernath, Joogul, Narain, and Kishore, of wilful murder, and Musst. Koshelah of privity and of being an accessary after the fact, I would beg to recommend that they all be imprisoned in banishment for life. I do not suggest a capital punishment, as the precise degree of guilt of each is not sufficiently apparent.

The witness Eshor is the son of the prisoners Narain Mistree and Musst. Koshelah, and is only about eight years of age. He is a very precocious boy, and is well acquainted with the nature of an oath, and it was therefore administered to him, but he committed perjury. He swore before the magistrate that he had seen his two brothers Juggernath and Joogul, the prisoners, throw the deceased into the grave; and before this court denied that he had done so, but urged that he had been instructed to say so by the prosecutor. In consequence of his tender age, I have not committed him to take his trial for perjury, but perhaps the example would be beneficial, as occasionally boys of a similar age are, from their knowledge of good and evil, admitted to be evidence, and it would be dangerous to let them suppose that they will be exempted from the penalties of perjury.

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The witness Benye Pal died after the case was committed to the sessions; so I have had the deposition made by him before the magistrate proved and have transferred it to my record as evidence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson, J. Dunbar and R. H. Mytton.)—MR. R. H. MYTTON.—This is a case of great atrocity. A gomashta having given offence to two young men, in taking them to task for irregularities, and indeed having chastised one of them, they inveigle him to their house, and with the assistance of their father and younger brother, their mother also being an abettor, suffocate him in a grave prepared for the purpose filled with watery mud (all the prisoners appear to live in the same homestead.)

It is proved by the witnesses Nos. 18 and 20, that the prisoner Joogul called the deceased away from his house on a Friday in Magh last, at two *ghurries* of the night, saying that he had some business with him. The witness No. 4 saw them pass over his yard towards the prisoners' dwelling, and No. 2 heard the deceased in conversation with Joogul and Juggernath in their east house. At four or six *dondos* of the night, the witnesses Nos. 2, 3 and 4, heard some struggling at the prisoners, and as it were a rattling in a man's throat. Nos. 2 and 3*, Horish and Benye, went and called to the elder prisoner, Narain, inquiring what was the matter, but received no answer. They then got a light and were joined by No. 4. Just as Benye Pal brought up the light to the door Joogul knocked it out, and apparently, though not stated by the witnesses, went back into the house. Benye Pal went for another light, and about this time the female prisoner got a lighted wisp, and probably to deter the neighbours from entering the house in which the tragedy had taken place, set fire to it. The neighbours put it out. Benye Pal had returned with another light, when all the male prisoners rushed out. The witnesses Nos. 2, 3 and 4, above alluded to, and Nos. 14 to 20, recognized them as they came out. On entering the house, the watery muddy grave above noticed, with a board and mat over it, were observed and examined, and the body of the deceased gomashta was found in it.

No outward marks were observable on his body, and it was too decomposed to be examined internally by the surgeon, who, however, from the appearance was of opinion that the deceased did not die a natural death, but may have been suffocated. The prisoners do not deny at any stage that Sheebram was murdered, and although we have not the usual advantage of evidence on view of the corpse as to the exact mode in which death was caused, there can be no doubt but that he was stangled or suffocated, or partly one, partly the other.

* This witness had died before the trial, but his evidence before the magistrate has been verified and brought on the record.

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The evidence establishes that all four male prisoners were in the very house at the time the deceased was murdered; further, that Joogul inveigled him there.

The prisoners have at no stage confessed their guilt, but from the statements of each before the magistrate something may be gleaned in corroboration of the evidence.

Juggernath admits that he assented to the murder being committed in his house, but states that it was perpetrated by the witnesses, and not by him, and that they dug a hole and put the deceased into it.

Here is an admission of the particular way in which the murder was perpetrated. The attempt to throw the blame on the witnesses is futile. Why should they choose another person's house for the commission of such a crime?

Joogul states that being on return home, he heard Juggernath crying out that Birjoo Mistree and others had killed Sheebram and were throwing his body into a hole. He went and saw the hole and Sheebram's body. The neighbours taxed him and Juggernath with the murder. The house took fire by accident.

Here is corroboration of the house taking fire, but without any explanation of the cause, and an admission that the prisoner and his brother were immediately charged with the murder.

Narain, the father of the family, states, that he was at Birjoo Mistree's when he heard a scream at his house. He and others went and saw the house on fire. They put it out. The villagers made a great row, and he ran away and sat on a *chur* all night, returned next day and saw Sheebram's body.

Here again is corroboration of the house being on fire. Birjoo Mistree, a relation of the prisoner, gives evidence, which shows that the prisoner's story about being at his house is false. His running off and sitting on a *chur* all night is inconsistent with innocence. Moreover it is not conceivable that the sons could have made and prepared the grave without their father's knowledge and connivance.

Kishore states that he was with his father at Birjoo's when their east house took fire; that he and others went, and put it out; that a light was brought at the suggestion of Doorga Ram, and Benye went in, and pulled Sheebram's body out of a hole. He adds; my brothers may have killed him, I had no enmity against him.

Koshelah, the female prisoner, states, that she was ill of fever in the north house at the time, and that many people came, and she heard that the house was on fire. A light was brought by Benye Pal and Doorga Ram, and they pulled Sheebram's body out of a hole in their east house.

There is nothing in the above statements fairly suggestive of a doubt as to the truth of the evidence in this case. It establishes beyond a doubt that the father, Narain, and his three sons were principals in this foul murder, and that his wife aided and abetted. The sessions judge finds her guilty only as an accessary, but she was

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near enough to lend assistance, and did lend assistance to the actors, and therefore is rather an aider and abettor. He has recommended all to be punished alike, *viz.*, by imprisonment for life, giving as a reason for abstaining from recommending a capital sentence, that the precise degree of guilt is not sufficiently apparent.

He must, I presume, by this mean, that the precise part in the murder taken by each is not apparent, for he declares the ***legal degrees*** of guilt in his opinion established.

But, be it even as I suppose, the reason given is not a sound one. The precise part taken by each person in a secret murder committed by more than one person can never be ascertained, except by the revelations of those of the party. To act upon such a principle, therefore, would be to grant comparative impunity to secret murders when committed by persons sufficiently hardened or wary to be able to deny their guilt throughout.

In my opinion the law having declared the punishment for murder without mitigating circumstances to be death, and the evidence having established who were the actors in this murder, (one of the foulest that ever came to my notice,) the question for determination is rather whether there are any circumstances, which would justify the court in sparing the lives of any of the guilty parties.

Kishore Ram is very young, only sixteen, and allowance may be made for the influence of his father and elder brothers; I would sentence him to imprisonment for life.

The female prisoner is only a principal in the second degree, and the sentence on her husband and two sons which I am about to propose must be a severe punishment to her also; I would sentence her to imprisonment for life.

In favor of the remaining three prisoners, I regret to be able to find not one single thing. They have in my opinion fully incurred the utmost penalty of the law, and I would sentence them to death.

The sessions judge in my opinion exercised a wise and merciful discretion in abstaining from committing for perjury the remaining son of the prisoner, Narain, a boy of ten years of age.

It was a trial to his natural feelings, which a person of more mature years could scarcely be expected to stand, that of being placed in the box, to give evidence to send his father and brothers to the gallows. I have lately had occasion to notice with disapprobation a case in which a child of similar age, and under somewhat similar circumstances, was committed, tried and found guilty of perjury by a sessions judge, and then came the difficult question of disposing of him. The judge recommended that he should be sent to school, a sentence which the court could not of course pass.

MR. W. B. JACKSON.—The evidence proves that on hearing a noise in the house in which prisoners live, the neighbours went to it, one with a light. As they came to the door, Joogul, prisoner, ran out and put the light out. Musst. Koshelah, wife of Narain,

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then came up and set fire to the house; but the neighbours put it out, and, bringing a fresh light, entered the house; and as they entered saw the prisoner Narain, and the other three prisoners, his sons, Juggernath, Joogul and Kishore, run away out of the opposite door. They found in the house a hole dug, more than half full of mud and water, and the body of deceased Sheebram in it. The surgeon who examined the body, declares that there was no injury to any part of it; but that in his opinion the deceased died from drowning. Some witnesses say that they saw Joogul, prisoner, take the deceased with him to his house that evening. The evidence is therefore sufficient to implicate the four male prisoners in the murder, and the prisoner Koshelah in the crime of being accessary after the fact to the murder, as evinced by her setting fire to the house with a view to screen the perpetrators from punishment. But though there is reason to believe that she knew of the murder, there is none that she took any part in it, or was aware of the intent to murder. The murder was over when she set fire to the house; and that is the only circumstance against her in the case.

As regards the male prisoners, it is plain that the murder was previously planned, and the hole dug and filled with mud and water the day before, and that Joogul, prisoner, led the deceased into the snare. It is also plain that more than one person must have taken active part in the act. Moreover the four prisoners were seen leaving the house by the party entering. This recognition is perhaps rather a weak part in the evidence; but it is confirmed by the confession of Juggernath, who admitted that he lent the house to another person for the purpose of committing the murder; and by the deposition of witnesses who saw Joogul taking the deceased towards his house that evening; and others who said Joogul put out the light. The witness Horish Ram also heard Sheebram talking with Joogul and Juggernath that night. Several witnesses add that deceased had beaten Joogul severely a few days before. I would, under the circumstances, sentence Juggernath and Joogul to suffer death; and Kishore and Narain to transportation for life. Musst. Koshelah I would sentence to seven (7) years' imprisonment, with labor suited to her sex.

I think the sessions judge was right in not committing for perjury a child of eight years of age, who refused to give evidence, upon which his father, mother, and three brothers, might have been hanged.

MR. J. DUNBAR.—That Sheebram Deb died a violent death is beyond question. The evidence leaves no room to doubt that the whole of the male prisoners were concerned in the act, but as no one actually witnessed the foul deed, it is impossible to say which of them was the most, or which the least active, in the business. It is clear, however, that Joogul inveigled the deceased to the house; and Juggernath admitted before the magistrate, that he had consented

to the murder of Sheebram by another party. Their guilt stands out in a stronger light than that of the father and younger son. I concur therefore with Mr. Jackson, in adjudging these two men to suffer death, and in sentencing Kishore and Narain to imprisonment for life, in transportation. The evidence shows that when the door of the house in which the body was found was opened, only the four male prisoners rushed out, and that the prisoner Koshelah came from another house with a lighted wisp and tried to set on fire the house in which the murder was committed. It is insufficient in my opinion to connect her with the actual perpetration of the murder, but sufficient to warrant the strongest presumption that she knew what had happened, and was anxious, if possible, to destroy the evidence against her husband and her sons. I convict her as an accessary after the fact, and would sentence her as proposed by Mr. Jackson.

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PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

CHUNDUN PANDY (No. 2), NEETOO SINGH (No. 3), RUHEEM DAGEE (No. 4), BEEJEE PYKE (No. 5), JULLALDEE MUNDUL (No. 6), SUBTA NUSSOO (No. 7) AND BHAJUN JOOGY (No. 8).

RAJSHAHYE.

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Case of CHUNDUN PANDY and others.

The Nizamut Adawlut convicted the four prisoners, regarding whom the sessions judge made the reference in dissent from the law officer, who was for their acquittal.

CRIME CHARGED.—Mutual affray, in which Sumsa was severely wounded and died after six days; and Ruheem, Beejee, Subta and Bhajun, were slightly wounded, and Chundun and Neetoo received blows.

Committing Officer, Mr. J. C. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 16th February 1853.

Remarks by the sessions judge.—The reason for this reference is, that I dissent from the *futwa* of acquittal as regards the prisoners Nos. 4, 5, 7 and 8, and also with the finding, which is to the effect that there was no mutual affray, *i. e.*, an affray on both sides.

To state briefly the facts as elicited in evidence, and on which I rely, I may mention that the affray (as usual) arose from two rival *hauts*, one in the possession of Messrs. Watson and Co., farmers of an estate under the Court of Wards, and the other belonging to Jugmohun Roy and others, zemindars of Chodur. Both *hauts* were held on the same day, and, as far as can be made out, there is a *nullah*, or water-course, that approaches the village of Chodur, and which must be passed to get to Sabai, the *haut* of the *ijaradars*.

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Case of CHUNDUN PANDY and others.

Two boats laden with paddy were proceeding to the Sabai *haut*, when the zemindars' people stopped them, and would not allow them to proceed. Notice of this was given to the gomashta at Sabai, and a large *posse comitatus*, with up-country men, came down to the place where the boats were detained. An altercation ensued, the deceased advanced and gave *dohai*, or protested, when some one ordered him to be seized, on which an up-country man *(deswalla)* struck him on the side of the stomach with a sword, and he fell. On his son, the prisoner No. 4, advancing, another up-country man struck him on the forehead with a stick, and he also was laid prostrate ; clods were then thrown and blows given, and the result was that, besides the deceased and his son, Nos. 5, 7 and 8, received wounds, which were discernible when the police arrived, and of which they complained.

This complaint was lodged at Bagmareah, or the Bhowanygunge thanna, and a counter one by the ijaradars' people at the Dosootnee thanna, in which it was represented by the deponent, Bindo Pyke, that he had been pursued by the Chodur people, and was forced into the water ; that he (the deponent) had escaped ; and that two up-country men who were with him could not extricate themselves from the *dam* or weeds in the jheel, and they had been caught and carried off by the Chodur people. The prisoners Nos. 2 and 3, were both named in this petition as the parties who had been assaulted.

After great and unaccountable delay on the part of the Bhowanygunge darogah, and not till a burkundauz reported that it was doubtful if the deceased would survive, the case was investigated, and I regret to add very superficially ; and so slovenly that a most important answer to a question, as to who wounded the deceased, has been (purposely or not I cannot say) omitted. But both from the context, and the next question, it may be inferred that the answer given by the first witness was, that the deceased was wounded by an up-country man ; the answer to the second question being " another *deswalla* wounded Ruheem (or the prisoner No. 4)." It is not very clear whether the prisoners Nos. 2 and 3, were then in arrest or confronted with the witnesses ; but four of them (the first four in the calendar) deposed both before the magistrate and this court, that the wound with the sword, inflicted on the deceased, was so by No. 2 ; and that his son, the prisoner No. 4, was struck by the prisoner No. 3, with a *lattee* or stick, and a large scar is still visible on the forehead of the former. The evidence therefore of the witnesses Nos. 1, 2 and 3, has been consistent throughout, and, in my opinion, is deserving of every credit as regards the actual outrage committed by the Sabai people, and the active complicity of the prisoners Nos. 2 and 3 in the same. They also establish the fact of the prisoners Nos. 4, 5, 7 and 8, being with the Chodur

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party, though they depose they did nothing, but this must be taken with many grains of allowance, as they are ryots of the zemindars.

The evidence of the chowkeedar (witness No. 4) is straightforward and clear. He does not appear to have been examined by the darogah—why, I cannot make out. I doubt much if he gave, as he says, *dohai*, because they threatened to *loot* his house. They may have used such a threat, as he belonged to Chodur, but it was only an empty one, and the detention of the boats with paddy by the Chodur people was the origin of the dispute, there can be no doubt whatever.

The rest of the evidence for the prosecution, except that of the *manjee* of the boat (witness No. 5), is most suspicious; and the story which they have evidently been tutored to tell is an improbable one. It is that the deceased while whirling two swords about (in triumph) wounded himself with one of them on the side and fell.

Now Mr. Bedford, the civil surgeon, though he could not hold a *post mortem* examination on the body, deposed that the wound was from behind to the front downwards, and a man would not have wounded himself either by accident or voluntarily, so severely; neither would the wound have taken the direction it did in the latter case.

Such being the case, it is next to impossible that the wound received by the deceased, and of which he died, could have been self-inflicted. When examined he named no one; and letting the prisoner No. 2 have the benefit of this doubt, a sentence only of five (5) years' imprisonment, with labor and irons, has been recorded against him and No. 3, both of whom I convict of being concerned in an affray attended with culpable homicide.

On the same evidence I consider the other four prisoners also guilty of the same offence, No. 4, with the deceased, being, in my opinion, the principal on the side of the Chodur zemindars' people who detained the boat (the first act of aggression), and who then confronted the Sabai party which led to the affray. Setting aside the *futwa*, I recommend that the prisoner No. 4, should be sentenced to five (5) years' imprisonment, with labor and irons. For the other three prisoners, Nos. 5, 7 and 8, I beg to suggest a mitigated sentence of six (6) months' imprisonment, with labor, commutable on the payment of a fine of rupees twenty (20) each, be passed. In all *haut* affrays I have found it difficult to separate the active and passive agents; but from all these four prisoners being more or less wounded in the affray, it may be safely presumed they were not *passive* spectators of what was going on; and though not the most active, they resented the attempt to take away the boats with paddy.

The great delay on the part of the darogah in investigating the case, and the way it was investigated, will no doubt attract the

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attention of the court, a censure from whom will have a good effect, as the apathy of the police in this case (ending so seriously), in my humble opinion, calls for animadversion.

The prisoner No. 6, against whom the evidence was not conclusive, and who received no wound *to mark him*, has, agreeably to the *futwa*, been released.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The animadversions of the sessions judge on the conduct of the police appear to me just and proper. The investigation of the case was much less prompt and satisfactory than it might have been. I concur in the view of the case taken by the sessions judge. I have no doubt that there really was an affray with violence on both sides, and as it is clear that it originated in the illegal detention of the boats by the zemindars' people, they certainly ought not to escape punishment. The sentences proposed by the sessions judge will issue against the prisoners Nos. 4, 5, 7 and 8, on a conviction of affray attended with culpable homicide.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

THAKOORDOSS KYBURT.

HOOGHLY.

1853. March 11. Case of THAKOORDASS KYBURT. Prisoners convicted of belonging to a gang of dacoits, on the evidence of approvers, sentenced to transportation for life.

CRIME CHARGED.—1st count, dacoity in having with a gang attempted to break into, and plunder the house of, Gobindo Chunder Manna, of Parolea, on the night of the 5th October 1850, corresponding with 20th Assin 1257; and 2nd count, having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 17th February 1853.

Remarks by the additional sessions judge.—On the 31st of January last, I tried two prisoners, and reported on the case as follows:—"The premises of Gobindo Chunder Manna, of the division of the village of Mazargong, which is called Parolea, in the thanna of Kudumgatchee, in the zillah of Baraset, were attacked, on the 5th October 1850, by a gang of dacoits; but the people of the house got on the high roof of the house, and threw bricks at the dacoits, and prevented their getting beyond the outer court, and no property was carried off. The above circumstances are shown by the evidence of Gobindo Chunder and the chowkeedar of the village, and they are confirmed by the reports which were made after the dacoity to the joint magistrate. It is shown by the evidence of three

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approvers that these prisoners were engaged in committing the above dacoity, and that they were usually attached to the gang of which one Shustee Bagdee was the leader, but who on that occasion had joined the gang of Ram Thakoor, which gang committed this dacoity. The three approvers had made depositions before the magistrate of Hooghly, respectively, on the 17th April 1851, the 25th April 1851, and on the 30th June 1851, and had given the particulars of the dacoity, and had stated that these prisoners were engaged in it, but the prisoners appear by the record not to have been apprehended until the 8th of May 1852. The prisoners called no witnesses for the defence; and as I fully believe that the approvers have stated the truth respecting their own connexion with the dacoity, and there is nothing to make me suspect that they had any reason for accusing these prisoners, who had not then been apprehended, and to whom they were little known, except that they all followed their own leaders, who joined their different companies in committing dacoities, I find the prisoners "*guilty*" of the crimes with which they are charged, and propose that they be transported for life. The other prisoners whose names were inserted in the calendar had previously been convicted of having belonged to a gang of dacoits, and consequently it was unnecessary to try them again."

The prisoner Thakoordoss Kyburt belonged to the gang of which Kartick Kowra was the leader, but which on occasion of this dacoity, joined the gangs of Ram Thakoor and Shustee Bagdee. In all other respects the former report is applicable to this trial. The prisoner was apprehended on the 8th of May 1852, and it appears to be an oversight that he was not committed for trial at the same time with the other prisoners. I find him "*guilty*" on both charges, and propose that he be sentenced to transportation, with labor in irons, for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The same remarks apply to this trial as to that of Deenoo Bagdee and Gungaram Bag, disposed of to-day. The prisoner Thakoordoss is convicted and sentenced as recommended by the additional sessions judge.

PRESENT:

R. H. MYTTON, ESQ., *Officiating Judge.*

GOVERNMENT

versus

DEENOO BAGDEE (No. 10) AND GUNGARAM BAG (No. 16).

HOOGHLY.

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Case of DEENOO BAGDEE and another.

Prisoners convicted of belonging to a gang of dacoits, on the evidence of approvers, sentenced to transportation for life.

CRIME CHARGED.—1st count, dacoity, in having in a gang attempted to break open and plunder the house of Gobindo Chunder Manna, of Parolea; and 2nd count, having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. E. Bentall, additional sessions judge of Hooghly, on the 28th January 1853.

Remarks by the additional sessions judge.—The premises of Gobindo Chunder Manna, of the division of the village of Mazargong, which is called Parolea, in the thanna of Kudumgatchee, in the zillah of Baraset, were attacked, on the 5th October 1850, by a gang of dacoits, but the people of the house got on the high roof of the house and threw bricks at the dacoits, and prevented their getting beyond the outer court, and no property was carried off. The above circumstances are shown by the evidence of Gobindo Chunder and the chowkeedar of the village, and they are confirmed by the reports which were made after the dacoity to the joint magistrate.

It is shown by the evidence of three approvers that these prisoners were engaged in committing the above dacoity, and that they were usually attached to the gang of which one Shustee Bagdee was the leader, but who on that occasion had joined the gang of Ram Thakoor, which gang committed this dacoity. The three approvers had made depositions before the magistrate of Hooghly, respectively, on the 17th April 1851, the 25th April 1851, and the 30th June 1851, and had given the particulars of the dacoity, and had stated that these prisoners were engaged in it, but the prisoners appear by the record not to have been apprehended until the 8th of May 1852. The prisoners called no witnesses for the defence, and as I fully believe that the approvers have stated the truth respecting their own connexion with the dacoity, and there is nothing to make me suspect that they had any reason for accusing these prisoners, who had not then been apprehended, and to whom they were little known, except that they all followed their own leaders, who joined their different companies in committing dacoities, I find the prisoners "*guilty*" of the crimes with which they are charged, and propose that they be transported for life. The other prisoners whose names were

inserted in the calendar had previously been convicted of having belonged to a gang of dacoits, and consequently it was unnecessary to try them again.

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March 11.

Case of DEENOO BAGDEE and another.

Resolution of the Nizamut Adawlut, No. 196, *dated the* 18*th February* 1853.—(Present: Mr. R. H. Mytton.)—Read a letter No. 19, dated the 31st ultimo, from the additional sessions judge of Hooghly, submitting the proceedings connected with the case of Deenoo Bagdee and Gungaram Bag, charged with dacoity and having belonged to a gang of dacoits.

The court, having perused the papers above recorded, observe that the prisoners Deenoo Bagdee and Gungaram Bag have denied the charges throughout. Their conviction rests entirely on the evidence of the approvers. In such a case it is necessary to test the credibility of that evidence closely. It depends much on the question whether they named the prisoners in their *first* statements, under what circumstances those statements were obtained, and whether the approvers had any opportunity of communicating with each other before they made them. The court have a translation of the statement of Sindoo Mytee on record, but those of the other two approvers, Nobin Kowra and Harran Teelee *alias* Harran Bagdee, are not on the record of this trial, nor on that of their own trials in which they pleaded "*guilty*". The additional sessions judge will call for them, and the information above alluded to from the commissioner for the suppression of dacoity, and submit the whole to this court.

Reply of the officiating additional sessions judge, No. 14, *dated* 4*th March* 1853, *submitting the following letter from the Commissioner for the Suppression of Dacoity, dated* 3*rd idem:*

"I have the honor to acknowledge the receipt of your letter No. 11, of the 1st instant, enclosing copy of a Resolution of the Court of Nizamut Adawlut, dated the 18th February.

"In reply I beg to forward the original confessions of Nobin Kowra and Harran Teelee, and to inform you that the names of Gungaram Bag and Deenoo Bagdee, were mentioned by the three approvers in their *first* statements.

"The greatest precautions, by confinement in separate guard-houses, have invariably been used by me to prevent persons whom I intended to make approvers, having any opportunity of communicating with each other until their confessions have been finally recorded; and in the present instance, I firmly believe that they did not communicate with each other. I have been fully aware of the necessity of preventing any chance of collusion between the approvers, as their evidence would thereby be rendered worthless, and have therefore taken the utmost pains to prevent anything of the kind. I have always recorded in the papers of each case that everything had been done to keep them separate, and I inserted my

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name in the calendar of this trial to testify to the steps which had been taken to secure the desired end. Mr. Bentall, however, did not consider it necessary to take evidence on the point."

Remarks by the Nizamut Adawlut.—(Present: Mr. R. H. Mytton.)—The information contained in the letter of the commissioner for suppression of dacoity, dated the 3rd instant, is satisfactory, and with it the evidence may be relied on. The prisoners are convicted and sentenced to transportation for life, as recommended by the additional sessions judge.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

A. J. M. MILLS, ESQ., *Officiating Judge.*

BHAGBUT SAHOO

versus

KHAJAY NUZROO.

CUTTACK.

1853.

March 12.

Case of KHAJAY NUZROO.

The prisoner was sentenced capitally for murdering a boy for the sake of his ornaments.

CRIME CHARGED.—1st count, wilful murder of Bullya, the son of the prosecutor, aged ten years, for the sake of his ornaments; 2nd count, stealing from the person of the said Bullya, the son of the prosecutor, gold and silver ornaments to the value of rupees 15-6-9; and 3rd count, having stolen property in his possession knowing that it had been stolen.

Committing Officer, Mr. R. P. Harrison, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 31st January 1853.

Remarks by the sessions judge.—It appears that on the 24th December last, during the absence from home of Bhagbut Sahoo, the prosecutor, his son Bullya, the deceased, aged ten years, went to Dass Barrick (witness No. 7) for the purpose of getting shaved, but the said Dass Barrick being engaged in his field refused to comply with his request, and Bullya left him and went away in the direction of Khajay Nuzroo, the prisoner's house, which is situated about two *teers* distant from that of the prosecutor, and was not afterwards seen; and search having been unsuccessfully made for him, information of his being missing was on the third day communicated to the prosecutor, who came home the following day and learned that his brother had that morning gone to report the circumstance at the thanna. And on the 1st of January, the fifth day after the arrival of the police, while the darogah was instituting inquiry regarding the head and chest of a child, which, prior to his arrival, had been found lying in the plain at mouza Narainpore, and which Bhagbut Sahoo supposed to be that of his son Bullya, and the jemadar and Koonwur Khan, Burkundauz (witness No. 1) were by order of the darogah searching the jungle in the vicinity of the prosecutor's house, the

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burkundauz, on approaching Khajay Nuzroo, the prisoner's house, the door of which was closed, perceived an offensive smell issuing from it. And on sending for the prisoner, who had been in attendance and had gone to fetch a *dhoba* to cut the jungle, and causing him to open the door of his house, he, seeing there was no hope of escape, became alarmed, and acknowledged that he had killed Bullya, by throttling him, and that he had buried his body as well as his ornaments in his house, whence, on the arrival of the darogah, who was immediately sent for, they were exhumed. After which the confession of the prisoner was then and there recorded, and duly attested by the witnesses present. And he again repeated his confession on being taken before the officiating magistrate.

The above facts are all fully established in evidence, and both the confessions of the prisoner have been proved to have been voluntarily made. And although the corpse was far advanced in a state of decomposition, it, and likewise the ornaments, were identified to be Bullya's.

Before this court the prisoner denied killing Bullya, but admitted that the body was found in his house, alleging some one had thrown it there, and that the jemadar and burkundauz maltreated him and tutored him to say that he killed him and buried his body in one place and the ornaments in another, though the ornaments were found on the body. He also stated that he was tutored to say that Kallay Sahoo saw the body of Bullya in his house. But he called no witness to support his defence.

The *futwa* of the law officer convicts the prisoner, on the grounds of his own confessions in the Mofussil and before the foujdaree court, and the finding of the ornaments belonging to the deceased in his house, of the wilful murder of Bullya for the sake of his ornaments, &c., and declares him liable to punishment, *kissas*, and in this verdict I concur; and seeing no extenuating circumstances whatever in favor of the prisoner, I would sentence him to suffer death.

The evidence of Kallay Sahoo (witness No. 12 of the calendar) was not recorded before the officiating magistrate, neither was any inquiry instituted touching the fact of his having stated before the police, as he did also before this court, that on the day of the murder he saw something in the corner of the prisoner's house under a *tappa* or basket, and was told by him that a "fowl was sitting there." And the magistrate's attention has in consequence been called to paragraph 14 of the Court's Circular No. 54, of the 16th July 1830, as, had inquiry been made at the proper time, I think it not improbable, with reference to the highly incredible nature of the story told by the said witness, that it might have been found that he was in some way implicated in the murder.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and A. J. M. Mills.)—MR. A. J. M. MILLS.—The guilt

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of the prisoner is quite clear and there are no circumstances in the case which would, in my opinion, justify the passing of a mitigated sentence, I propose therefore that a sentence of death should issue.

MR. W. B. JACKSON.—From the prisoner's confession before the magistrate and at the time of the discovery of the body, as well as from the body being pointed out by prisoner and found in his house, with the ornaments, it is established that the prisoner, Khajay Nuzroo, murdered the deceased Bullya, a child of ten years of age, for the sake of his ornaments. I would convict the prisoner of murder and sentence him to suffer death. I understand Mr. Mills' conviction to be of the same crime, though his note merely says the guilt of the prisoner is established; the sentence of death may therefore issue.

MR. A. J. M. MILLS.—Of course I convict the prisoner of wilful murder.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

SHEIKH WUZEER AND GOVERNMENT

versus

SHEIKH EKRAM.

HOOGHLY.

1853.

March 12.

Case of SHEIKH EKRAM.

A mitigated sentence was passed upon the prisoner in consequence of his youth.

CRIME CHARGED.—1st count, assaulting Abbas Chokra, the prosecutor's son, with intent to murder him, and stealing from his person silver ornaments of the value of Company's rupees 1-11-0, on the 12th January 1853; 2nd count, assaulting the said Abbas Chokra, son of the prosecutor, with intent to do him grievous bodily harm, and stealing from his person silver ornaments, &c., of the value of Company's rupees 1-11-0; and 3rd count, receiving and keeping in his possession stolen property knowing it to be such.

Committing Officer, Mr. R. B. Chapman, officiating magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 3rd March 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged, *first*, with assaulting, with intent to kill and robbery; *secondly*, with assaulting, with intent to do some grievous bodily injury and robbery; and *thirdly*, with receiving and keeping in his possession stolen property, knowing it to be such; and pleads "*not guilty*" to all the counts of the indictment.

The object of the prisoner's violence is a little boy of about six years of age, whose father, the prosecutor, deposes that missing him one evening, he went in search of him, and while thus employed was informed by one Sulim that his child was lying in an empty house in the garden of Ahmud Buksh, darogah, uttering faint groans; that

he repaired to the spot, and found his boy in the arms of one Handa, in a state of insensibility, stripped of the ornaments he usually wore; that he carried him home, and tried every means to restore him to animation, and only succeeded in doing so towards morning, when the boy told him that the prisoner had enticed him away with the promise of giving him a bird, and when he had got him into a shed, had slapped him and squeezed his throat. The rest of his evidence goes to show that the prisoner was arrested on the information given by the boy, confessed the crime before the police, and produced the silver ornaments that were missing.

The first witness, Bungsi Chowkeedar, was the party to whom the boy's information was communicated, and who arrested the prisoner and accompanied him to the spot from whence he produced the stolen articles.

The next witness is the youth Handa, who says that having occasion to go into his master's garden, he heard groans issuing from a shed, and proceeding thither with a light discovered the prosecutor's son lying on the floor in a state of insensibility, without his ornaments.

The rest of the evidence tends to prove that the boy and the prisoner were seen standing on the road on the evening in question, and that the prisoner made a voluntary confession of the crime before the police, and produced the missing ornaments from the spot where he had secreted them.

I experienced some difficulty in getting the record of the prisoner's confession before the magistrate verified, and was obliged to require the attendance of the officer who presided on the occasion before I succeeded in obtaining a formal attestation.

The prisoner denies the charges before this court, and repudiates his confessions, declaring them to have been unfairly obtained, but cites no witness in proof of plea.

The *futwa* of the law officer convicts the prisoner of the second and third counts of the indictment, on his confessions before the police and the magistrate, and declares him liable to discretionary punishment by *tazeer*.

The finding is not inconsistent with the evidence adduced on the trial; but I cannot divest my mind of the suspicion that something more than robbery was contemplated by the prisoner towards his victim. The alluring away into a secret spot, the detention there until night-fall, and the severity of the assault, all denote the purpose of extreme violence, and create a presumption of an intent, if not to kill, certainly to inflict grievous bodily injury.

Of the guilt of the prisoner there can be no doubt. The evidence, as far as it goes, is clear and consistent, and there is no incongruity between the two confessions made by the prisoner or any question as to their having been fairly and legitimately obtained. Whether he committed the deed alone, or with the assistance of others, as is

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stated in those confessions, is immaterial; he is clearly responsible personally for the part he took in the perpetration of the crime, and in that light obnoxious to the heaviest punishment of the law, short of its extreme penalty. But he is a mere boy, apparently not more than sixteen or seventeen years of age, and I cannot help feeling that justice will be satisfied, and the law vindicated, by his incarceration for fourteen (14) years, instead of enduring the heavier sentence his crime has incurred. To that punishment therefore I recommend the prisoner; and seek on his behalf the clemency of the court on account of his youth.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—There can be no doubt of the prisoner's identity and his guilt; under the sessions judge's recommendation of mercy, the mitigated sentence is confirmed.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT, BHUNDOORAH SIRDAR ON THE PART OF KATTYANEE DEBEA AND OTHERS, ZEMINDARS, AND BANSHEENATH MUNDUL, GOMASHTA,

versus

MUDDUN CHUNDER CHOWDRY.

RUNGPORE.

1853.

March 15.

Case of MUDDUN CHUNDER CHOWDRY.

The Nizamut Adawlut upheld the sentence passed upon the prisoner, convicted of robbing his master's money-safe.

CRIME CHARGED.—1st count, fraudulently embezzling the sum of Company's rupees 350, which he, by virtue of his employment as agent for the collection of rents of the village of Rammessurpore, on the part of Banshee Mundul, gomashta of Kattyanee Debea and others, zemindars of Rammessurpore, had received and held in trust; 2nd count, breaking the treasure-chest kept in the zemindary cutcherry of mouza Rammessurpore, and fraudulently removing therefrom, with intent to appropriate to his own use, the aforesaid sum of rupees 350, and with a view of concealing his misappropriation of the said sum of rupees 350, falsely declaring to the darogah of thanna Bograh, that the cutcherry had been robbed, the chest broken open, and cash to the amount of Company's rupees 395-15-6 and property valued at Company's rupees 1-9-3 carried off; and, 3rd count, theft of the sum of Company's rupees 350, the property of Kattyanee Debea and others, zemindars—he being at the time the confidential agent of Banshee Mundul, gomashta of the aforesaid zemindars.

CRIME ESTABLISHED.—Breaking the treasure chest kept in the zemindary cutcherry of mouza Rammessurpore, and fraudulently removing therefrom, with intent to appropriate to his own use, the

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Case of MUDDUN CHUNDER CHOWDRY.

sum of rupees 350,* and with a view of concealing his misappropriation of the said sum, falsely declaring to the darogah of thanna Bograh that the cutcherry had been robbed, the chest broken open, and cash to the amount of rupees 395-15-6, and property valued at rupees 1-9-3 carried off.

Committing Officer, Mr. R. H. Russell, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 8th November 1852.

Remarks by the sessions judge.—From the statement of the prosecutor on the part of certain zemindars, and the evidence adduced, it was proved that the prisoner No. 13, who, as a confidential agent of a gomashta (Banshee Mundul, made prosecutor also,) of the zemindars, had the charge of collecting the rents of the village of Rammessurpore, the estate of the zemindars, did, on the 12th August last, break open the treasure chest under his charge of the zemindary cutcherry, and fraudulently remove therefrom rupees 350, rents collected belonging to the zemindars, with intent to appropriate the same to his own use, and in order to conceal the misappropria-

* On revision of the statements for November 1852, the following observations of the court (Present: Sir R. Barlow, Bart.) on this portion of the charge and finding, were addressed to the sessions judge, by register's letter, No. 1727, dated 30th December 1852.

With reference* to that portion of the charge and finding as marginally cited* against the prisoner Muddun Chunder Chowdry, No. 13 of Statement No. 6, I am directed by the court to observe that it should not have formed a portion of the charge or conviction. It does not amount to a criminal offence punishable by law, unless the prisoner made the declaration on oath as prosecutor, according to Clause 1, Section XIII. Regulation XX. of 1817, in which case he might have been tried for perjury. Your conviction therefore on the second count being wrong, you should pass such sentence on the first count as you may think proper. You will accordingly revise your finding and pass sentence on the prisoner, reporting your having done so to the court.

* And with a view of concealing his misappropriation of the said sum, falsely declaring to the darogah of thanna Bograh, that the cutcherry had been robbed, the chest broken open, and cash to the amount of rupees 395-15-6, and property valued at rupees 1-9-3 carried off.

Reply of the Sessions Judge, No. 14, *dated* 18*th July* 1852.

With reference to your letter I have the honor to forward, for entry in the Statements, the revised sentence passed by Mr. T. Wyatt, the sessions judge, in the case of Muddun Chunder Chowdry.

"First count, fraudulently embezzling the sum of Company's rupees 350, which he, by virtue of his employment as agent for the collection of rents of the village of Rammessurpore, on the part of Banshee nath Mundul, gomashta of Kattyanee Debea and others, zemindars of Rammessurpore, had received and held in trust.

"Imprisonment with labor, without irons, for five (5) years, from 8th November 1852."

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Case of MUDDUN CHUNDER CHOWDRY.

tion of the said sum, he falsely declared to the police darogah, that the cutcherry had been robbed, and chest broken open, and cash to the amount of rupees 395-15-6, and property valued at rupees 1-9-3, carried off.

The prisoner voluntarily confessed in the Mofussil and foujdaree to all the above, and the sum of rupees 350 which was recovered by the police, found to have been concealed under ground in the house of Bedesshee Manjee (witness No. 8), and which was produced on the trial.

The prisoner in his defence alleged that he had taken the money in question, which had been rents belonging to the zemindars collected by him in payment of a *mahajanee* loan, which he had contracted with ryots under bonds of rupees 150 and rupees 200, to make good a previous balance of rent due to the zemindars, stating that he had been aided by the police darogah to make a false complaint of the cutcherry having been robbed, and that the darogah had given him some sweetmeat which had stupified him, when he confessed he knew not what, nor can recollect what he said in the foujdaree. He calls no evidence in support of his allegations.

The jury by their verdict (orally given) found the prisoner "*guilty*" of the 2nd count, in which I concurred.

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor without irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner confesses he removed the money from the treasure-chest. It was under charge of the burkundauzes and was broken open, the money carried off and buried in a ryot's house for safety sake, as the man in whose house it was found, states. The prisoner then gave information at the thanna that a robbery had been committed in the cutcherry. The defence set up by the prisoner is inconsistent with the acts and statements above referred to. There can be no doubt of his fraud and his intent to appropriate the money. I see no reason to interfere with the sessions judge's order.

PRESENT :

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND RAMKANT GURAIN
versus
GOUR BAROEE CHOTAR.

BEERBHOOM.

1853.

March 16.

Case of GOUR BAROEE CHOTAR.

The sentence of the sessions judge was confirmed, the evidence furnished by the repeated confessions of the prisoner, and the production of part of the plundered property, being held fully to establish his guilt.

CRIME CHARGED.—1st count, dacoity attended with wounding committed in the house of Ramkant Gurain, from whence property valued at rupees 26-10-0 was plundered; and 2nd count, knowingly receiving property acquired by the said dacoity.

CRIME ESTABLISHED.—Dacoity attended with slight wounding.

Committing Officer, Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 29th December 1852.

Remarks by the officiating sessions judge.—The prosecutor's house was entered on the night of the 29th Kartick last or 13th November 1852, and plundered of property valued at rupees 26-10-0, by a gang of seven or eight dacoits, all, or nearly all, of whom were recognized. The personal violence complained of was trifling. The prisoner was apprehended on the 15th November, and confessed, both before the darogah and before the magistrate, to having been one of the party; he also produced from a tank near his house the articles marked Nos. 1 to 4, which were identified as belonging to the prosecutor.

In this court he pleaded "*not guilty,*" and stated that he had exchanged a brass *gurrah* and a debt due to him by the prosecutor for the articles now found in his possession. Four witnesses called by him were in attendance, but after the first had given unsatisfactory evidence, he declined to have the others examined.

There can, I think, be no doubt of the prisoner's guilt, but I would give him the benefit of what he says was the motive which actuated the ringleaders of the gang, *viz.*, spite against the prosecutor, because he would not lend out his money. None of the party appear to have been professional dacoits; still, considering the nature of the crime, which is so very prevalent in this district, and that personal violence was made use of, I cannot pass a less sentence upon the prisoner than eight (8) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—Admitting that the prisoner has stated the truth in saying that the motive which actuated the dacoits was spite against the prosecutor because he would not lend out his money, I cannot see what

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benefit the prisoner should derive from a plea, which enhances rather than palliates the guilt of the offenders. I see no reason to interfere with the sentence; the proof against the prisoner is strong, his confessions are proved to have been voluntarily made, and he himself produced the plundered property. There is nothing on the record to show why the prisoner was apprehended; it is merely stated in the *chellan* that he had been taken up on suspicion, but the darogah should have stated the reasons for suspecting him.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT AND MAHOMED ALEE NEGABAN *versus* MEEAHOOLLAH.

Sylhet.

1853.

March 18.

Case of Meeahoollah.

The prisoner, convicted of complicity in murder, was sentenced to transportation for life.

Crime Charged.—1st count, wilful murder of Musst. To *alias* Noorjan; and 2nd count, privity to the above crime.

Committing Officer, Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 11th February 1853.

Remarks by the sessions judge.—On the 13th of October last, the dead body of a woman, who had evidently been murdered, was discovered lying on a small hill outside the town of Sylhet, and it was ascertained on inquiry to be that of Musst. Torye, *alias* Noorjan Bebee, a prostitute of the town.

No eye-witness to the murder has been forthcoming, although a free pardon and a high reward were offered for the discovery and conviction of the murderers; but the circumstantial evidence elicited by the investigations of the police leaves no doubt in my mind that the murder was committed by the prisoner.

It is proved by the evidence of Musst. Kishwur and Musst. Soobuk that the prisoner Meeahoollah came to the house of the deceased on the night of the 11th of October and offered to marry her, but the deceased objected that she had not seen his house, and they accordingly went together for that purpose. They were met on the road by Mahomed Tuckee, who distinctly swears that he recognized them, and that he could not be mistaken as to this identity because they were close to him. The deceased was never again seen alive; but on the evening of the 13th of October her body was discovered about two hundred yards from the prisoner's house with her throat cut from ear to ear, and her face shockingly mutilated.

The prisoner denies that he ever went to the house of the deceased, and called witnesses to prove that he was employed on the night on which he is sworn to have taken away the deceased with him, in the house of one Badoo, digging; but this fact is not substantiated, as

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the witnesses cannot name the precise night, and the story is highly improbable. Natives do not usually work at night, and the prisoner is not a day-laborer, but was formerly a jail burkundauz, and is at present out of employ.

Under these circumstances, I cannot but coincide in the verdict of the assessors, which convicts the prisoner on strong circumstantial evidence of the wilful murder of the deceased.

The person who first saw the body deposes that he did not examine it, and the second one declares that when he saw it, the nose, with a gold ornament on it, was on the face; yet two hours afterwards, when the darogah arrived at the spot, the nose and upper lips were wanting, and he reported that they had been eaten off by jackals. The native doctors, who, in the absence of a civil surgeon, examined the body, depose, on the contrary, that the nose and lip were cut off by a sharp instrument, and had been so cut after death; but this circumstance is not mentioned in their written report, and is open to suspicion. The mutilation could have been made only with the view of concealment, and it is improbable that the perpetrators of the murder should have returned to perform the act after they had placed the body in an exposed position. They would have done it while in their house, for it is clear that the body was carried to the spot some hours after death, as it was in a state of decomposition.

It is probable that the woman on seeing the prisoner's house and style of living, refused to marry him, and that in a fit of passion he murdered her, and only carried out her body when he was unable to keep it in his house.

I have acquitted the prisoners Shuroollah and Jungoo.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The witnesses Musst. Kishwur and Musst. Soobuk depose that they saw the prisoner Meeahoollah take away the deceased, Musst. Torye, on the night of the 11th October; the women are all prostitutes, and the prisoner took deceased with him to show her his house; he had talked with her of marrying her; Musst. Soobuk was placed in Musst. Torye's house to take care of it during their absence; deceased had ornaments on her at the time: the witness Mahomed Tuckee saw the two going together towards prisoner's house, but the deceased never was seen afterwards and never returned to her own house; but on the 13th her body was found, without the ornaments, and much mutilated, and with the throat cut, not far from the prisoner's house: these are circumstances sufficient to establish a strong presumption against the prisoner. The defence that he sets up is that he was digging in the garden of another villager during the night of the 11th. Several witnesses speak to this fact, but their statement is opposed to the depositions of Kishwur and Soobuk, which I think the far most credible of the two. I convict the prisoner Meeah-

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oollah of being an accomplice in the murder charged against him; that he actually committed the murder is not positively established, but there can be no doubt that the deceased was murdered, and the circumstances are such as to show that the act could not have been committed without the prisoner's participation. I sentence him to transportation for life.

PRESENT:

W. B. JACKSON, Esq., *Judge*.

GOVERNMENT

OMRAO.

SARUN.

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March 18.

Case of OMRAO.

The prisoner was acquitted, because it was proved he had committed the offence charged when out of his mind.

CRIME CHARGED.—Wilful murder of Musst. Khedea.

Committing Officer, Mr. F. A. Glover, officiating joint magistrate of Chumparun, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 8th February 1853.

Remarks by the sessions judge.—This case was postponed at the conclusion of the last sessions held at Moteeharee for further inquiry as to the sanity of the prisoner Omrao, and is now referred to your court in consequence of my dissent with the *futwa* of the law officer, by which he is convicted of wilful murder, and made liable by *deeyut*, whereas, under all the facts of the case, and especially with reference to Dr. Simpson's opinion, I conceive that he should be acquitted of the charge, and, under the provisions of Act IV. of 1849, should be kept in safe custody in a lunatic asylum.

The prisoner is charged with the murder of his wife Khedea, by beating her about the head and face with a stone used for grinding curry, &c., and there is no doubt but what he killed her; though, as no one capable of giving evidence was present when he did so, it is impossible to say what took place, or what provocation was given by the deceased. The alarm was first given by two of the prisoner's own little children, who, seeing him beating their mother, cried out; whereupon some of the neighbours came in and found him standing over the woman, who was lying on the ground (still breathing), and as soon as he (prisoner) saw them coming, he threw the stone, which he still held in his hand, upon her head, and then ran off, but was speedily followed and captured.

The woman never spoke after she was beaten; and when her body was sent in, it was found to have been greatly injured about the head, and to have had some cuts on the face, and a portion of the upper lip had been cut off. A *huswa*, or sickle, too, was found lying by the body, and it was supposed that this had been used by the prisoner, as well as the stone, but it was so blunt that I can

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hardly imagine it to have been used (the prisoner has all along denied its use), and it is certain that the stone was the instrument with which the deceased was killed.

To the police the prisoner admitted having killed his wife, and assigned as the cause of it, her having abused him; but to the magistrate he said that he had done it, because she was in the habit of going from home with a girl belonging to Bhinuk Lal, a witness examined in the trial; but as I have already observed there is no knowing what passed between them at the time he killed her, and it is therefore impossible to say what she may have said or done to arouse his passion.

Neither the sub-assistant surgeon at Moteeharee or the joint magistrate considered the prisoner insane; but as all the witnesses examined on the trial spoke of him as having been out of his mind for some months (they all speak of him as wandering about, throwing clods, &c., at, and abusing, those he meets), I deemed it proper to make some further inquiry as to his sanity, and therefore (postponing the trial) had him sent to Chuprah, and placed under the care of the civil surgeon, in order to have his opinion on this point. This has now been given and the court will see by Dr. Simpson's report and depositions, that he thinks the man insane and a fit object for a lunatic asylum.

Under these circumstances I consider that the prisoner should be acquitted of the charge preferred against him, and that a reference should be made to Government for his transfer for safe custody to the asylum at Patna; but as the moulvee (though he admits the prisoner to be insane) convicts him of wilful murder, and holds him liable for it by *deeyut*, it becomes necessary in the first instance to refer the case for the orders of your court, and I therefore submit the proceedings and would suggest, in the event of their agreeing with me, that the prisoner be acquitted, and that the usual application be made to Government for his being sent to the insane hospital at Patna.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—It is clear from the evidence that the prisoner Omrao killed his wife; but with reference to the statements of the witnesses who knew him before the occurrence, and say that he was subject to fits of lunacy and was apparently under such a fit on the morning of the occurrence; also with reference to the evidence of the medical officer, who examined him afterwards and pronounced him to be of unsound mind, I acquit him of the charge of murder, on the ground that he was not in a sane state of mind when he committed the act; orders will be issued for placing him in safe custody for the future.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT AND RAMLUTA GWALINEE

versus

HULADHUR CHUCKERBUTTY (No. 1) AND HOBOO, ALIAS ESSER CHUNDER CHUCKERBUTTY (No. 2, APPELLANT).

HOOGHLY.

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Case of Hoboo *alias* Esser Chunder Chuckerbutty, (appellant) and another.

The prisoner's plea of *alibi* not being established, his appeal was rejected.

CRIME CHARGED.—1st count, Nos. 1 and 2, accomplices in the culpable homicide of Bunnally Hyte, husband of the prosecutrix; and 2nd count, assault.

CRIME ESTABLISHED.—Accomplices in an aggravated assault attended with homicide.

Committing Officer, Baboo Kissory Chand Mittra, deputy magistrate of Jehanabad, Hooghly.

Tried before Mr. J. S. Torrens, sessions judge of Hooghly, on the 4th November 1852.

Remarks by the sessions judge.—The prosecutrix is the widow of the deceased Bunnally Hyte. The prisoners are brothers, sons of Nund Coomar Chuckerbutty.

No. 1 Huladhur Chuckerbutty, No. 2 Hoboo, *alias* Esser Chunder Chuckerbutty. They are committed on two counts—

First.—As accomplices in the culpable homicide of deceased.

Second.—With assault.

The case of the principal in this crime, Sreedhur Chuckerbutty, was tried before the Sudder Court on the 29th May last, when he was sentenced to five (5) years' imprisonment, for culpable homicide of the deceased, caused by bodily injuries from a beating on the 24th March 1852. The witnesses Nos. 1 to 4, depose to the prisoners' taking a part in that beating and assisting in dragging the deceased from his house across the plain. The defence by the prisoners is that when the beating and death took place they were not present, but in their own houses.

The evidence leaves no doubt as to the accused having accompanied their brother, Sreedhur Chuckerbutty, to the house of the deceased, and their joining in the beating and maltreatment which caused the death of the deceased, on the ground where it occurred. In the trial of the principal, Sreedhur Chuckerbutty, it was deposed that the kick on the privy parts, which was inflicted by Sreedhur, was the immediate cause of death. This, however, I do not conceive to be established; and the Sudder Court has grounded its conviction of the principal on the evidence given as to the injury generally sustained from the beating and dragging. The two prisoners in this

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Case of HOBOO *alias* ESSER CHUNDER CHUCKERBUTTY, (appellant) and another.

case are shown to have desisted from the beating of the deceased before he actually fell in a dying state to the ground, but it is proved from the same evidence, that he was senseless and deprived of the power of speech before he received the injury sustained from the kick inflicted by the principal, Sreedhur Chuckerbutty, after he fell on the ground.

The *futwa* of the law officer finds the prisoners "*guilty*" of the charges preferred. In this conviction I concur; and with reference to the punishment of five (5) years' imprisonment, without irons, and with labor adjudged by the Sudder Court, and to the somewhat extenuating circumstances of these prisoners not having acted with the same cruelty as Sreedhur Chuckerbutty, convicted by the court, in that they desisted from the beating and let go the deceased when they saw the extent of his suffering and danger, I sentence them to a somewhat less punishment, and direct that they be imprisoned for four (4) years, with labor and without irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—This trial is supplemental to that of Sreedhur Chuckerbutty, decided on the 29th of May last, (see page 876 of Decisions for that month). The prisoner Esser has appealed. He pleaded an *alibi*, but it was not established. I see no reason to doubt the evidence for the prosecution, which clearly establishes the prisoner's participation in the homicide. I reject the appeal and confirm the sentence as amended under the orders of this court, No. 27, dated 7th January last.*

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* *From the Register of the Nizamut Adawlut, to the Officiating Sessions Judge of Hooghly, No. 27, dated 7th January* 1853.

The court having had before them your letter, No. 221, of the 31st ultimo, submitting the statements connected with the sessions of jail delivery, held by you in the month of November last, direct me to observe that the sentence passed by you upon the prisoners noted in the margin, on the conviction recorded against them in column 10, is not legal, the imprisonment being for less than five (5) years; and to request that you will commute the penalty of labor, with or without irons passed upon them, to a fine, as laid down in Section III., Clause 1., Regulation II. of 1834, drawing up the sentence in the form prescribed by their Circular Order, No. 146, of 6th June 1834, and forwarding a copy thereof for entry in the statement in this office.

Huladhur Chuckerbutty and another, Nos. 1 and 2 of Statement No. 6.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

RADHAMONEE MOOCHEENEE AND GOVERNMENT *versus* BUNGSHEE MOOCHEE (No. 1) AND SHISTEEDHUR MOOCHEE (No. 2).

NUDDEA.

1853.

March 19.

Case of BUNGSHEE MOOCHEE and another.

The sentence proposed by the sessions judge was passed by the Nizamut Adawlut, on the prisoners convicted of aggravated culpable homicide.

CRIME CHARGED.—Wilful murder of Surbo Moochee, and aiding and abetting each other in the same.

Committing Officer, Baboo Issur Chunder Ghosaul, deputy magistrate of Santipore, Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 25th February 1853.

Remarks by the sessions judge.—For the reason given by the law officer of this court, the crime of wilful murder has not been proved ; but it is clear, from the evidence of the witnesses, that there had been a feud between the parties for the right to flay the carcasses of the beasts that die, and are thrown out on a spot used for that purpose near every village, called "Bhagarh."

The quarrel had existed for two months, and the prisoners had been heard to say that even if they were hung for it they would oppose the deceased in taking the hides off any dead beasts which were thrown on that spot.

On the day on which deceased got his death-blow, there was a fight between him and Shisteedhur Moochee (prisoner No. 2), when the latter got the deceased down, and was beating and kicking him, and Bungshee Moochee went to his assistance, with a bamboo post of a shed, the dimensions and weight of which are recorded, and gave the deceased three or four severe blows about the head, neck, and shoulders. The deceased was removed senseless, and though he lived for some hours, he did not speak again.

Considering the crime as proved by the witnesses on whose evidence the prisoners have been convicted of aggravated culpable homicide, deserving of more punishment than I am empowered to award in such cases, I have the honor to submit the trial for the orders of the superior court, and beg respectfully to suggest that a sentence of fourteen (14) years' imprisonment, with labor in irons and in banishment, may be passed on the prisoners.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The prisoners deny the charge, but their guilt is clearly proved by the eye-witnesses, who ran to the spot and saw the prisoners in the act. The prisoner No. 1 cites no witnesses. The defence of prisoner No. 2, fails entirely. I confirm the sessions judge's conviction and sentence the prisoners as proposed.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

RUSSICK ROY (No 1), AND NUBO ROY (No. 2).

24-PERGHS.

1853.

March 19.

Case of RUSSICK ROY and another.

In a case of dacoity, the guilt of the prisoners having been established by the evidence, direct and circumstantial, and by their voluntary confessions, the sentence of the sessions judge was confirmed on appeal.

CRIME CHARGED.—1st count, highway-robbery of property valued at rupees 87-6-0, belonging to Jadub Chunder Kur and Gour Mohun Mitter, witnesses ; 2nd count, receiving portions of the above property knowing them to have been so robbed ; 3rd count, dacoity in the *doongar* of Jadub Chunder Kur and Gour Mohun Mitter, witnesses, and plunder of property therefrom to the amount of rupees 87-6-0 belonging to the above parties ; and 4th count, knowingly receiving property obtained in the aforesaid dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Moulvee Abdool Luteef, deputy magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 20th December 1852.

Remarks by the additional sessions judge.—On the 25th of May last, the wife of Gour Mitter applied to the magistrate of the 24-Pergunnahs, for protection from her husband, and the police were accordingly directed to protect her. On the 16th of July, one Kalee Roy, who is a brother of Russick (prisoner No. 1), gave a petition to the magistrate, and prosecuted Gour and others, as his house had been searched and property carried off, the object of the offenders being to obtain the wife of Gour Mitter, and it appears that they did get her back. On the 29th of June the prosecution was relinquished. On the 8th of August, Tipporah, the mother of Russick, went to the darogah, who had come into the neighbourhood of his house, and was staying at the *pharee* of Honree, and complained that her house had been attacked, &c. The darogah sent two policemen to inquire into the matter, and it was found that Jadub was lying in a *doonga*, about one and a half *russees* from his house. He said he had been attacked and robbed when he was on his way in a *doonga* with Gour and his wife, and two other men, to Chitlah-haut, near Calcutta. There are altogether twelve witnesses to the attack on the *doonga*, and every prisoner is said to have been recognized by three or more witnesses, and they all state that the attacking party consisted of fifteen or sixteen men. But there is great want of truthfulness in the evidence for the prosecution. It is stated that Jadub called out to the attacking party between 1 and 2 o'clock A. M. that he was going in the *doonga* with treasure, and this cannot be believed. The witnesses have made forty-seven mistakes respecting the persons whom they said

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before the magistrate that they had recognized, and whom they said before me that they had recognized. They have agreed in seventy-two instances respecting the persons, but in twenty instances out of these the prisoners were said before me to have been recognized by the voice alone, and it cannot be supposed that any bystander could recognize ten or more men by their voices in the midst of such a disturbance. The evidence of the other witnesses is also bad. Thus it is shown that Gour ran off when the first attack was made, yet although the night was dark, he declares that he recognized every prisoner, which even Jadub, who alone is said to have remained in the *doonga*, could scarcely have done. There is a strong party-spirit in the case, and no witness except Gour and Jadub came forward and gave evidence until the 14th and 19th of August, although the crime took place on the 9th of that month, and the darogah was on the spot at the time that it occurred, and seven of the prisoners were apprehended on the 9th of August. From the circumstances of the case it appears very probable that Gour got up a party and attacked the house of Kalee Roy, his object being to get back his wife, and that some of his accomplices carried off property, and that this case was got up by Russick and Nubo, his relation, as a counter-attack on occasion of Gour's leaving the village with his wife and property. The prisoner Russick was apprehended on the 9th of August, and confessed the same day before the darogah, that he was engaged in the attack, and that he received some of the spoil, which he buried in his house; he confessed again before the magistrate on the 11th of August. There is also proof that he dug up the stolen property in his house. The prisoner Nubo, was also apprehended and confessed on the same day as Russick. Before the police he said that some of the property was in the house of one Kumul, and he pointed it out in a grain basket.

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The evidence establishes the fact of the attack upon the boat, and the voluntary confessions of the prisoners both in the Mofussil and before the magistrate, as well as the production of part of the plundered property by each of them, are fully proved. I think the sessions judge is most probably right in his conjectures, as to the origin of the attack. The case is clearly one which comes under the denomination of dacoity according to the terms of Section III., Regulation LIII. of 1803, and as the proof is complete, I see no reason to interfere with the order of the sessions judge.

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT

versus

AJOOLLAH SHEIKH (No. 1), NARAIN JALLEAH (No. 2), TUCKEE CHOWKEEDAR (No. 3) AND BAD-OOLLAH CHOWKEEDAR (No. 4).

RAJSHAHYE.

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Case of AJOOLLAH SHEIKH and others.

The Nizamut Adawlut concurred with the sessions judge, in convicting the prisoners of accessaryship to murder instead of culpable homicide, which was the finding of the law officer.

CRIME CHARGED.—1st count, wilful murder of Haroo Paramanik; 2nd count, accessaries before and after the fact; and 3rd count, privity.

Committing Officer, Mr. J. A. Dodgson, officiating magistrate of Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 23rd February 1853.

Remarks by the sessions judge.—The reason for this reference is, that I differ with the law officer as to the crime committed. He convicts the prisoners of accessaryship to culpable homicide, while in my opinion there can be no doubt the offence with which they are charged was the crime committed; and for the part they took in the murder, and privity thereto, all four are liable to punishment.

As there is no direct evidence, and the conviction of the prisoners mainly rests on their own confessions, it will perhaps be sufficient if I give an abstract of the evidence, and the substance of the confessions made before the officiating magistrate of Rajshahye.

The prosecution was a public one, and the prisoners all pleaded "*not guilty*."

The wife of the deceased deposed that her husband went out on the evening of the occurrence saying he was going to speak to his cow-herd, the son of the witness No. 17.

This witness No. 17 deposed, that the deceased came to her house when the prisoners Nos. 1 and 2 shortly after came and took him away, on the plea of his being wanted to settle a dispute. The deceased went away with them, and when he left her house he was in perfect health.

Witness No. 19 deposed, that on the night of the occurrence he saw all the four prisoners standing near a body that was on the ground, and on his wishing to go nearer, the prisoners Nos. 1 and 4 threatened him, and he ran away. Next day he was again threatened if he divulged anything.

Witness No. 20 deposed to the same effect, except that he could not say if the corpse was that of a man or a cow. He was also threatened by the prisoners Nos. 1 and 2 at the time, and also the next day if he said anything.

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Witness No. 22 (a female) deposed to the same effect. She went out of curiosity to see what was the matter, though told by the two last witnesses not to go. She, however, could not tell whether the body was that of a live or dead person.

Witness No. 23 only heard men disputing with the deceased in the house of the prisoner No. 2. He lived half a *russee* from the prisoner.

Witness No. 24 (Lochun Paul) found a body near his house, whose, he could not say; and this he removed to the boundary of another village. (In the foujdaree this witness deposed to giving bribes to the prisoners Nos. 3 and 4, but as the charge against them was not for taking bribes he was not questioned on this part in the sessions court.)

The next two witnesses, Nos. 27 and 28, helped to bury the body of the deceased. There was a mark on the neck and which was swelled and the skin was off the right elbow.

The witnesses to the *sooruthal* only partially attest it. The inquest was held after the body was exhumed; and on all such occasions, from the great reluctance natives have to touch, or go near a body when decomposition has commenced, you never can get from them a consistent story of what they witnessed, or were called upon to witness. Three of them (witnesses Nos. 1, 2 and 3) speak to the neck being swelled. Azoolah, the first witness, also washed the body before it was buried and saw no mark as if a stick had been forced up the *anus*.

The occurrence took place, it will be seen, on the 20th of January, but no report was made at the thanna till the 29th, and though the prisoners confessed at the thanna, and the confessions were proved to have been voluntarily made, much reliance cannot be placed on them. I, therefore, pass over them entirely.

The substance of the confessions made by the prisoners before the officiating magistrate of Rajshahye, by Nos. 1, 2 and 3, on the 31st January, and by No. 4 on the 1st February 1853, were as follows:—

No. 1 confessed to hearing the deceased call out "do not kill me," when the prisoner No. 2, threw him down and another person (named) thrust a bamboo up his *anus*. Shortly after a bamboo was brought, and the body was carried off and thrown down near the house of Lochun Paul (witness No. 24). The prisoner denied calling the deceased out of the house of Junnoo Khoolanee (witness No. 17). He, however, knew the deceased had an intrigue with her, but the cause of the dispute related to the *neem shadee** of Zyeendee's daughter.

No. 2 confessed to going with No. 1 to the house of Junnoo, where they found the deceased, who No. 1 invited out, and on his

* A marriage ceremony when a wife's appearance denotes that she is in the family way.

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accompanying them, and reaching a lane near his (the prisoner's) house, No. 3, and two others named, threw him down, and though he entreated to be spared, they would not let him go, but beat him. By whose blows his death was caused he could not say, but when dead they dragged away the body. He and No. 1 then went away. That the deceased had an intrigue with Junnoo, and it was from jealousy they killed him. Saw no stick put up the deceased's *anus;* admitted saying in the Mofussil, the deceased had threatened to burn Shumsdee's house, but the real origin of the dispute was the intrigue with Junnoo Khoolanee.

No. 3 confessed to seeing several persons (whom he named) sitting down near the body of the deceased, when he (the prisoner) asked what they had been doing, and added he should make a report at the thanna. These persons then took up the body and carried it to Lochun Koomar's house, he was made to go with them by the prisoner No. 4. That he did not know who killed the deceased, or who had an intrigue with Junnoo.

No. 4 confessed to seeing his son (No. 1) at night in the house of No. 2, and next day his son informed him that a body was lying at the Jumalpore boundary, where the villagers of Jumalpore and Koorpore were assembled; went and saw the body of the deceased. Did not report the circumstance at the thanna, as the chowkeedars, and herdmen of Jumalpore and Koorpore took the responsibility on themselves. He had some conversation with Lochun Paul about it. (The nature of this will be seen in the confession but is not material to the present trial.)

The prisoner No. 2 admitted his confession before the officiating magistrate; and all four were fully proved to have been voluntarily made by the prisoners before the officiating magistrate.

The defence of the prisoner No. 1, was an *alibi;* but this he totally failed to establish.

No. 2 pleaded he was at home all night; but this he could not establish.

No. 3 pleaded he was during the early part of the night at the zemindar's cutcherry, and the rest of the night at his own house; but none of his witnesses supported his statements.

No. 4 pleaded he was on watch all night. None of the witnesses heard him call out, but two saw him going his rounds.

The law officer in his *futwa* states, that as it is not proved by eye-witnesses who struck the deceased, or how he met with his death, the killing only amounts to culpable homicide; and as Nos. 1 and 2 were aiding and abetting, both before and after the fact, and Nos. 3 and 4 were privy to the same, and concealed the circumstance, all were liable to *tazeer.*

Now, in my humble opinion, the evidence clearly establishes the fact of Nos. 1 and 2 calling out the deceased from the house of Junnoo Khoolanee; to their having been seen standing afterwards

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near a body lying on the ground; and to their using threats to the witnesses who came near the place.

From the confessions of these two prisoners (before the officiating magistrate) there can be no doubt they were both present when the deceased was killed, who they had before inveigled out to the place where he met with his death. When seized and beat, they never raised a voice for his succour, or did they attempt to prevent his being murdered. I think there can be but one opinion that the killing amounted to murder.

The other two prisoners were police chowkeedars. No. 3 saw the deceased lying dead on the ground, and saw his body carried afterwards to Lochun Paul's house by the party, who, he must have suspected, were concerned in killing him, but he never said anything, nor did he report the circumstance. No. 4 saw the body lying on the Jumalpore boundary, but never said a word, though he must have surmised, from his son's statement, that the deceased had met with an untimely end. His motive for concealing the murder was to screen his son. This was natural; but he not only concealed the murder, but received a large bribe from Lochun Paul to allow the latter to remove the body from his premises in order that suspicion might not attach to him.

But that "murder will out" is an old and true saying; and for the part the two first prisoners took with, and for the attempt on the two latter to conceal it, I beg leave to suggest that Nos. 1 and 2 be convicted of being accessaries both before and after the fact to the murder of Haroo Paramanik, and sentenced to fourteen (14) years' imprisonment, with labor and irons, and Nos. 3 and 4 be convicted of being accessaries after the fact to the murder and privity thereto, and they both be sentenced to five (5) years' imprisonment, with labor and irons.

With this opinion I beg to refer the case for the court's orders. All four prisoners are in jail.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The particulars above recorded form a very correct abstract of this case. There is strong circumstantial evidence against the prisoners independent of their several confessions in the foujdaree court, which are duly attested before the sessions judge. The prisoners endeavour to throw the *onus* on each other, but there is ample evidence for conviction of all of them. As recommended by the sessions judge, I confirm the sentence proposed to be passed.

PRESENT.:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

SREEMUNT SAHOO (No. 7) AND BYDONATH BISWAS (No. 8).

BEERBHOOM.

1853.

March 19.

Case of SREEMUNT SAHOO and another.

The order of the sessions judge, sentencing the prisoners to punishment for being assembled in a gang with intention to commit a dacoity, confirmed on appeal.

CRIME CHARGED.—1st count, attempt to commit dacoity in mouza Gonreepore; and 2nd count, accomplices in the abovementioned crime.

CRIME ESTABLISHED.—Assembling in a gang at night with arms such as are used by dacoits with the intention of committing dacoity.

Committing Officer, Moulvee Fyzoollah, law officer, with magisterial powers, Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 18th January 1853.

Remarks by the sessions judge.—In this case the witness Joy Hurree was proceeding to the village of Gour Hurree, of which he is a chowkeedar, at about six *ghurries* of the night of the 5th Aghun or 19th November last, when he saw three persons sitting amongst some clumps of bamboos on the outskirts of the village, smoking and discussing the dacoity they were about to commit. In passing on he observed several other persons going in the direction of the bamboos, but managed to avoid being seen by them, and hurried away to communicate his suspicions to one of the village Munduls, Gooroo Churn Mundul (witness No. 9). At his desire he reported the circumstance to the neighbouring *pharee*, where fortunately he found two other burkundauzes besides the *phareedar*. Immediately on receiving the information, they collected some other chowkeedars and accompanied Joy Hurree to the spot, where they discovered the gang, consisting of twenty or twenty-five persons, who, on finding they were detected, forthwith took to their heels. The two prisoners were after a short scuffle laid hold of, though not until after Sreemunt Sahoo (prisoner No. 7) had received two very severe sword-cuts from Bungshee Chowkeedar, and were detained until the darogah's arrival the next day.

The prisoners have throughout pleaded "*not guilty.*"

Sreemunt Sahoo (prisoner No. 7) states, that on the night of the occurrence he was at an entertainment at the house of Radanath Sahoo, in the village of Mahta, and that at about one and half *puhurs* of the night, as the party was breaking up, Dununjoy Bagdee came and informed him that some persons were cutting his mulberry plants; that they then went in the direction of his field, and on reaching it he saw several men issuing out of the bed of a neighbour-

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ing *nullah;* at the same moment Dununjoy snatched away his cloth from off his shoulders, and then, being afraid that something would happen, he ran away, but was pursued and cut down by a blow on the back and on the arm.

The three witnesses to his defence state that the prisoner was considered to be a man of good character, and had employment in a shop belonging to one Bessinbeharee, but whether as a servant or as a partner in the business they do not know.

Bydonath Biswas (prisoner No. 8) states, that a little before midnight he heard a noise outside the village in the *maidan*, and went in the direction of it to see what was going on; that as he approached the spot and called out to know what was the matter, he was seized hold of by Kishub Chowkeedar, Sreemunt Chowkeedar, and Ramjoy Chowkeedar, who, on being asked why they did so, answered "you were amongst the gang." He adds that he has had a dispute with these chowkeedars and others for several years; that they were all workmen in his late uncle's silk factory, and are in arrears, which he has been taking steps to realize, and has thereby incurred their enmity; that he has also been the means of throwing the brother of Sreemunt chowkeedar into prison for a balance of rent due to the zemindar; so that on several accounts they owe him a grudge.

The evidence for the defence, as far as it has a tendency to disprove the case for the prosecution and to show that the prisoner on hearing the tumult in the *maidan* went out there to see what was the matter, is untrustworthy. The assemblage of the gang with arms in the bamboo plantation outside the village of Gour Hurree: their flight on the approach of the police, and the apprehension of the prisoners on the spot are established in a clear and satisfactory manner by a number of eye-witnesses, including the three burkundauzes, and this is confirmed by the defence set up by prisoner No. 8.

On looking over the foujdaree record, I found a petition signed by the prisoner Sreemunt Sahoo, praying that the witnesses named therein may be summoned for his defence. It is dated the 12th Poos, or 25th December, but does not appear to have been seen by the magistrate till the 3rd January. On that date he ordered the petition to be laid before the law officer, who had made the commitment, which however was not done till the 6th idem, when it was considered too late to take any steps in the matter, as the case was ordered for trial in this court on the 7th January. As the provisions of Regulation IX. of 1796 required that the witnesses named by the prisoner should be summoned, the necessary order for that purpose should have been passed by the magistrate at once, and then the postponement of the trial might have been avoided, which in the present instance was extremely inconvenient, as the trial had been held with the assistance of a jury of five persons, whom it is not easy to

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get together after they have once separated. With regard to the prisoner Sreemunt Sahoo the trial was postponed.

The jury brought in a verdict against the prisoner Bydonath Biswas of "*guilty*" of the crime of assembling in a gang at night with arms such as are used by dacoits with the intention of committing a dacoity; and concurring in that finding, and considering that a conviction of that offence is quite consistent with the charge entered in the calendar, I sentenced him to five (5) years' imprisonment, with labor in irons.

The witnesses for the defence of Sreemunt Sahoo, summoned on the 8th instant, attended on the 11th instant; but I was unable to collect the jury again (one of them having gone to his home in the interior of the district) till the 18th. The additional evidence did not tend to raise a doubt of the prisoner's guilt. The jury brought in the same verdict; and in concurrence therewith I passed the same sentence as upon the prisoner No. 8.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —Three *mussals*, four sharpened bamboos and two *lattees* were found on the spot after the dispersion of the assemblage. The prisoner Sreemunt when taken had a sword, and Bydonath a *lattee*. The presumption is, that a dacoity had been planned for that night, and would have been committed but for the discovery of Joy Hurree Chowkeedar. The prisoners are punishable under Clause 4, Section IV. Regulation LIII. of 1803.

I see no reason to interfere with the sentence of the sessions judge.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

MR. J. P. HAMPTON AND GOVERNMENT

versus

RAMLALL MOOKERJEA (No. 22), CHUNDERNATH MOOKERJEA (No 23), MOHESHCHUNDER CHUCKERBUTTY (No 24), NEELMADHUB BANERJEA (No. 25), GORACHAND GHOSE (No. 26), NEPAL SHEIKH (No. 27) AND OMED SHEIKH (No. 28).

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Case of RAMLALL MOOKERJEA and others.

Assault and affray with wounding by a large body of men, punished by imprisonment for five years, with labor.

CRIME CHARGED.—1st count, having, on the 26th September 1852, illegally and riotously assembled and attacked the premises of the prosecutor Mr. J. P. Hampton, and plundered the house of one Ajaib Singh, the jemadar of the said prosecutor, Mr. J. P. Hampton; 2nd count, having illegally and riotously assembled a second time, attacked the premises of the prosecutor Mr. J. P. Hampton, during which attack one Nuddea Bassee, on the part of the prisoners, was killed, and Dewanee Sheikh, Madaree (also on the part of the prisoners) and Moushad, a thanna burkundauz, were wounded; 3rd count, aiding and abetting in the aforesaid crimes; and 4th count, instigating the aforesaid crimes.

CRIME ESTABLISHED.—Instigating others illegally and riotously to assemble and twice attacking the premises of Mr. J. P. Hampton, during the first of which they plundered the house of his jemadar, and during the second, one Moushad, police burkundauz, was wounded.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 18th January 1853.

Remarks by the sessions judge.—The particulars of this case as elicited by the evidence for the prosecution, are as follows:

On the 26th September last, about 10 A. M., between three hundred and four hundred armed men riotously assembled together and attacked the premises of the prosecutor, Mr. J. P. Hampton, and plundered the house of his jemadar.

Two or three men in the service of the prosecutor remonstrated with the assailants, but were beaten back and fled. All the prisoners were present on the spot, with the exception of Ramlall Baboo. Ajaib Singh, the jemadar, who was absent from home at the time, was informed of the occurrence by one Ramlall Chowkeedar, and on returning and finding the rioters plundering his house, gave information to the police. The darogah and the moonshee, at his request, came to the spot, and were conducting inquiries, when a second time between 1,000 and 1,500, or, according to the statement of others,

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between 3,000 and 4,000, armed men, riotously assembled, and again attacked the premises of the prosecutor. In this attack they were opposed by about fifty or sixty men armed on the part of the prosecutor, and one Moushad Sheikh, a police burkundauz, was wounded with a *surkee*. Amongst the rioters, Hajee, *surkeewallah*, who has since absconded, Ram Baboo, and the other prisoners were seen, some on elephants, some on horseback, and others in palkee or on foot.

The prisoners, as usual in such cases, pleaded an *alibi*, but the evidence adduced was not worthy of credit, and there was ample proof to convict them of nearly all the charges on which they were committed.

This outrage originated in an attempt on the part of the prisoner, Ram Baboo, who is the *putneedar*, to compel Mr. Hampton, who is the *ijaradar*, to enter into fresh engagements. Patkabaree, a *mehal* contiguous to the prosecutor's house and where the prisoner Ram Baboo resides, was farmed by the prosecutor, whose lease had not yet expired. Notwithstanding which Ram Baboo, in his nephew's name (Chundernath), took the *putnee* of the said *mehal* from Nowab Sufder Alee Khan, the actual proprietor, at a *jumma* in excess of the farmed *jumma*. The quarrel between the parties commenced in July 1852, and had got to such a pass, that some days previous to the attack the police darogah, apprehending there would be a breach of the peace, reported the circumstance to the magistrate, who bound both parties over in recognizances to the amount of rupees 3,000 each.

The defence of Moheschunder Chuckerbutty shows that great pains had been taken to obtain the *putnee*, and that an ill-feeling existed between the parties. The *mehal* being farmed by the prosecutor and the lease being still in force, had not the prisoner Ram Baboo, after having taken the *putnee*, instigated the *ryots* against the farmer, they, being still his tenants, would never have ventured to join in the quarrel.

The darogah's evidence makes it clear that a great number of people riotously assembled together and a second time attacked the prosecutor's house, and this statement was corroborated by the defence of the prisoners Gorachand Ghose, Nepal Sheikh and Omed Sheikh, who stated that they saw the rioters on the scene of action from a short distance off, and by the evidence of the thanna mohurir and Chunder Singh and other burkundauzes, as well as the peons of the collector, who, during the occurrence were present on the spot with *dustuks*. They stated that they saw a riotous assemblage, and the prosecutor's people opposing the rioters, and that during the attack, Moushad, a police burkundauz, was wounded.

The darogah and the moonshee further stated that they were going towards Ram Baboo's house, when they heard the beating of a gong in the direction of the prosecutor's house, and apprehending the riot they proceeded there, and found the rioters assembled in two places.

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There appears to have been a *dunka* or gong in every village, by which no sooner was an alarm given than the men on the part of the prisoners assembled together in arms.

Before the second attack took place an alarm was sounded by *dunkas* in the villages of Cooleechundee, Patkabaree, Maudpore and Gowghatta, to assemble them.

With regard to the first attack, although it is proved by the servants of the prosecutor and not by other witnesses, yet I do not think the evidence the less worthy of credit, because during the attack none but the servants happened to be present, and the attack must have been sudden and unexpected, as they were not prepared to oppose the rioters. The few who were present appear to have made a stand, but were overcome, being slightly wounded, and the rioters in consequence entirely plundered the jemadar's house, breaking down the fences of the *baunkroom*, and scattering the property in every direction. The appearances of the plunder are deposed to by the darogah and the thanna burkundauzes. The darogah also saw one or two of the prosecutor's servants wounded. Under these circumstances there can be no doubt of the first attack having been made by the prisoners.

Ramlall Baboo was the chief instigator of this outrage, and although two out of the three witnesses, who had deposed in the foujdaree court that he was absent from the scene of action, stated in this court that he was present, yet I did not credit their testimony. Ram Baboo's house was near to the spot, and it is in evidence that he arrived there five or seven days before the attack, and in ample time to make preparations.

The prisoner Chundernath Baboo, called by several of the witnesses Chunder Mohun, was proved to have been present aiding and abetting in the said attacks. Although he pleaded an *alibi* at the time, and produced witnesses to prove it, they were his dependents, and their evidence could not be relied upon against the weight of evidence for the prosecution.

Moheschunder Chuckerbutty was the mookhtar and naib of Ram Baboo and Chundernath Baboo. Neelmadhub was the nephew of Ram Baboo and Gorachand; Nepal and Omed were his tenants. It was proved by the eye-witnesses that all of them were present in the said attacks which were directed by Neelmadhub and Mohesh.

Mohesh in his defence declared that he lived in Sydabad, and was in Baboo Chur on the day of the occurrence. He produced witnesses to swear to the fact, but there were discrepancies in their evidence, and they appeared evidently to have been instructed.

Gopee Singh, the thanna jemadar, in his deposition before the magistrate at first stated nothing in exculpation of the prisoner Mohesh; but on being again questioned, stated that he had met the prisoner on the road near Baloochur on the 26th September, as he

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was about to execute a *hookumnama* issued to him by the darogah on the 24th September. The date of the *hookumnama*, upon the document being produced, was found to have been altered from the 21st to the 24th September, to substantiate this evidence, and the jemadar was punished by the magistrate.

Soonder Singh, another police burkundauz, who in his deposition before the magistrate stated that he did not know the prisoner, identified him in this court, and stated that he saw him at Baloochur before the occurrence. He gave his evidence very reluctantly and prevaricated. As he was a police officer, the magistrate should be directed to pass such orders regarding his conduct as he might consider necessary. The evidence of the other witnesses was equally entitled to discredit. Had the prisoner, as alleged by him, been present in the courts as *mookhtar*, previous to the day of the occurrence, he could have proved it by official papers, and need not have resorted to the dependents of Calachand Baboo, who stood security for Ram Baboo, and to professional witnesses. From all the facts of the case I believe Moheshchunder to have taken a most active part in the riotous assault, and that he caused the *putnee* to be taken, in order to sow the seeds of dissension which led to this outrage.

Neelmadhub pleaded that he was at Nusseerpore on the day of the occurrence; but the witnesses in support of it were the *ryots* of Ram Baboo. Their evidence, and the way they remembered the exact date of the occurrence, is suspicious.

Gorachand Ghose, Nepal Sheikh and Omed Sheikh pleaded that they were far off from the scene of action, but their pleas were not substantiated by the evidence of their witnesses, some of whom stated that they saw them before, and some after the riot.

The magistrate in the second count of the calendar has specified that *during the second attack* one Nuddea Bassee on the part of the prisoners was killed, and Madaree and Dewanee (also on the part of the prisoners) were wounded, but there was no evidence to prove this statement. It should have been omitted from the count. It is apparent from the proceedings attached to the *nuthee* that one Nuddea Bassee had been killed and the other two wounded, but the fact should not have been specified in the count unless evidence could have been adduced to prove that the former was killed and the latter wounded during the collision between the parties in the second attack.

A mystery hangs over the death of Nuddea Bassee. It is proved that he met his death by a ball from a gun, which passed through his head, and must have killed him immediately, and the father of the deceased the same evening brought the body to the thanna, and charged Mr. Hampton with having fired the gun. It would have been better had the magistrate proceeded upon this charge separately and taken Mr. Hampton's defence, and if, as appears from the record, there was no evidence to substantiate it, the deceased having been

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shot at a distance from the scene of action, and it being impossible from the place where he was shot for any one to see the spot whence it is alleged the shot was fired, to have acquitted upon the charge and recorded the acquittal.

For the same reason it was unnecessary to cause the attendance, at the sessions of the witnesses to the inquest on the body of Nuddea Bassee, and to the injuries inflicted on the wounded men.

This unfortunate case has clearly shown, as similar cases have shown before, that no reliance can be placed upon the police, where the interests of a powerful zemindar are concerned, neither upon their activity, their courage or their honesty.

A bold front shown by them *when* the Baboos and their adherents were making preparations for the attack might have prevented it. During the collision the police appear to have been paralyzed, at least the estimable darogah at their head. It is to be regretted, however good and respectable he may have been previously, that he was ever transferred from a writer's desk to the responsible charge of a thanna. There is nothing in the evidence he has given to induce the slightest suspicion of his honesty ; but there is much of a negative character, that can only be attributed to the miserable state of alarm he was in the whole time.

It is my firm conviction that had another day elapsed before the arrival of the magistrate not one tittle of evidence would have been adduced. The magistrate states that he arrived there before they could " make up a story." There is much upon the record to show that the accused attempted in many ways to obstruct the course of justice. The countercharges against the prosecutor and the perjury of Moushad Burkundauz established the fact. It is not only charged against Mr. Hampton that he shot Nuddea Bassee, but he is charged also with shooting another person, whose body has never been found, and not only this, but witnesses were found ready at hand. The bearers who carried the darogah's palkee, and who were Ram Baboo's *ryots*, swear that they saw him shoot this other unknown individual over the body of Nuddea Bassee, and then convey his corpse to his own house, where it was concealed. The magistrate took these witnesses to the spot from whence they swore that they had seen the body lifted into the house by Mr. Hampton, and it was found that they could not by any possibility have seen it. Moushad Sheikh, burkundauz, who was wounded in the second attack, and must have seen those who were principally engaged in it, swore before the magistrate that Chundernath Baboo was on the spot, but denied the fact in his deposition on oath before me. The magistrate was directed to commit him for perjury.

Considering the previous position of the parties, the ill-feeling existing between them, the remaining term of the farming lease and the late possession of the *putnee* at an enhanced *jumma*, the apprehension of a breach of the peace, the penal recognizances taken in

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consequence, the arrival on the spot of Ram Baboo some days before the attack, the assembly in Ram Baboo's house on the morning of the attack, the opposition Mr. Hampton's *ryots* encountered in sowing the *chur* lands, the sounding of the gong in all the adjacent villages, the sudden attack on the jemadar's house, the subsequent assemblage of the armed rioters outside of Mr. Hampton's premises, the apprehension of Mr. Hampton for the safety of his family and property, and his preparation with the knowledge of the darogah, together with his assistant Mr. Verpleugh and a few armed retainers, to meet the attack and defend his premises, and the second riotous assault in which all the prisoners, excepting Ram Baboo, took an active part, the charges are in my opinion sufficiently proved, although there are discrepancies in the evidence, which may easily be attributed to the excitement at the moment where life and property were at stake of those who were looking on at the conflict, as well as those who were engaged in it.

The jurors, consisting of Mr. Hutchinson, the moonsiff of Lalbaugh, and the Hindu and Mahomedan law officers, sat with me on the trial. The moonsiff convicted all the prisoners, but the law officers convicted only Ram Baboo, of instigating the attacks, and acquitted the other prisoners. I concurred in the finding of Mr. Hutchinson, with the exception that I did not consider it proved that Ram Baboo was present, and sentenced the prisoners as stated.

The magistrate should have submitted in a case of so serious and conflicting a nature, a very full map of all the localities mentioned in the evidence. The one furnished by him during the trial was not sufficiently detailed.

Sentence passed by the lower court.—No. 22, three (3) years' imprisonment, and a fine of rupees two hundred (200) or labor. Nos. 23, 24 and 25, each, five (5) years' imprisonment, with labor, and Nos. 26, 27 and 28, each, five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—This is an attack made on an Indigo factory, in which Hampton, the prosecutor, was residing as manager, with his assistant Verpleugh; the darogah and his police officers were present at the time. It is not often that such satisfactory evidence can be obtained to the main facts of the occurrence; it is in evidence that the factory ploughs were sent out in the morning to plough the Eastern chur lands, which are part of the *nij abad* lands, or home cultivation, of the factory; when commencing, a gong sounded in an adjoining village, and the ryots turned out to oppose them; afterwards other gongs sounded, and the inhabitants of other villages collected. These villagers drove out the ploughmen, who retired to the factory. Not long after, a very large collection of one thousand men and upwards, assembled round the factory, armed with guns, swords, and staves; the manager called together his servants and armed himself and them

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to repel this attack; he also called on the darogah to assist him in repelling it. About two hundred of the assailants crossed the embankment which separates the private grounds of the factory and dwelling-house from the open fields, and attacked the servants of the factory; one man, a burkundauz, was wounded, and the jemadar Ajaib Singh's house was plundered; it appears also that one man, Nuddea Bassee, was killed with a gun-shot wound; but there is no evidence that he was wounded then and there; the assailants after this retreated.

Now it is plain that such an attack with armed men, to the number of one thousand, collected by sounding of gongs and apparently with some little discipline and arrangement beforehand, is utterly unjustifiable on the pretext of anything that happened previously. Such a proceeding is penal, and every one engaged in it is deserving of punishment; the opposition on the part of the factory was justifiable and meritorious, and would have been so, had they used much more force than appears to have been resorted to; but from the inquiry into the previous circumstances which led to the affray, it is shown that the assailants had not even the color of any petty grievance as an excuse for this attack; the lands of the East chur were the *nij* cultivation of the factory, and the factory had the right to cultivate them; the violent opposition to the ploughing was therefore criminal as well as the subsequent attack; further it appears, that the principal prisoner, Ramlall, had lately taken a *putnee* from the owner of the factory lands at a high rate, and had even been called on to enter into recognizances to keep the peace, in the expectation of a riot; the assailants therefore were obviously in the wrong throughout.

It remains only to decide whether the prisoners are proved to have been present in the affray. Much stress has been laid by counsel on the discrepancies between the statements made by the witnesses before the magistrate, who went to the spot the day after the occurrence, and the statements made upon trial. I would certainly in some cases admit such a plea in favor of those named by a witness on trial and not named previously; but even this would not apply to persons recognized when brought up for trial, as engaged in the affray, though not known by name; but in this case every one of the prisoners tried was named as recognized before the magistrate on the spot; and was also named as recognized by the witnesses on trial. Some witnesses on trial have said they recognized Ramlall, and some others whose names were not mentioned before by them; but Ramlall's name was distinctly mentioned by Nawab Singh before the magistrate and again by the same witness on trial. Attempts have been made to throw doubts on the witnesses who recognized Chundernath, Moheshchunder, and Neelmadhub, on the ground that there is discrepancy in their statements as to the color of the horses. I attach little or no importance to this; the witnesses say they changed their horses, on purpose to avoid recognition; it is

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amply proved that among the assailants there were two men on an elephant and two on horses; the witness Verpleugh, among others, attests this fact. It is also beyond a doubt that Ramlall was in his house about a mile from the factory that very morning and was seen there by the darogah. We know further that the only person who could have any object in this attack was Ramlall; and that it was moreover his duty as a landholder to use every means in his power to prevent a breach of the peace; when therefore a regularly-organized attack by one thousand armed men takes place on the part of his villagers, assembled by sound of gongs, it is impossible to avoid the inference that Ramlall was the instigator of the attack. I see no reason for rejecting the evidence to his actual presence, aiding and abetting, as well as instigating the attack; the recognition of the other prisoners as engaged in the attack is, in my opinion, well-established. I therefore see no reason to interfere with the finding or sentence of the sessions judge in this case; by which Ramlall is found guilty of instigating and the rest of committing the outrage in question; and they are sentenced, Ramlall to three (3) years' imprisonment, with labor, commutable to fine, and the rest to five (5) years' imprisonment, with labor, &c.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

PORAN.

CHITTAGONG.

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Case of PORAN.

In a case of false personation referred by the sessions judge, the prisoner was acquitted, as the evidence was not considered sufficient to place the guilt of the prisoner beyond doubt.

CRIME CHARGED.—Perjury, in having, on the 18th January 1853, deposed, under a solemn declaration taken instead of an oath, before the additional sessions judge of Chittagong, at a sessions trial, that his name was Bhooea Gazee, inhabitant of Jowarah, such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer, Mr. J. R. Muspratt, magistrate of Chittagong.

Tried before Mr. A. Forbes, officiating additional sessions judge of Chittagong.

Remarks by the officiating additional sessions judge.—On the 18th January 1853, the trial of Mahomed Nukee, on a charge of wounding with the intention to kill Musst. Mulka Banoo, was held by me at Chittagong. One of the witnesses named in the calendar was Bhooea Gazee. When Bhooea Gazee was called, a person of the name of Poran presented himself. He was first sworn, and then asked his name, to which he replied Bhooea Gazee, and in reply to a further question he said he resided at Jowarah.

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At the close of the day, before I had left the court, the Government vakeel reported to me that the name of the person who had given evidence in the name of Bhooea Gazee was Poran, and that when the buxshee, in paying the diet money to the witnesses, called out the name of Booeah Gazee, Booeah Gazee himself and Poran both came forward to receive the diet money.

I recorded the reply (amounting to confession) of Poran that evening, and I ordered the magistrate to commit him for perjury.

The fact of his declaring that his name was Bhooea Gazee is fully proved by that part of the record of the trial of Mahomed Nukee where the deposition of this man is recorded under the name of Bhooea Gazee, and by the evidence of Obhoya Churn Das.

The evidence of the buxshee, Ram Soonder, and other witnesses, prove, that the accused did give evidence on the 18th January 1853, and wanted to receive the diet allowance because he had given evidence.

I am satisfied that the false name was given after the prisoner had repeated the solemn declaration. So many instances have occurred of other persons obliging witnesses by appearing for them to give evidence, that I am confident that every witness whose deposition has been taken by me has been asked his name after he has repeated his solemn declaration. Moreover, the deposition of every witness is invariably read over, commencing with his name, before the witness is permitted to sign it.

The name of the witness is, I conceive, a fact material to the issue of the case. Otherwise, eye-witnesses to a fact, who, from sympathy or other motive, may desire the acquittal of the accused, may secure that acquittal by conniving at others personating them. The confederates will depose, with truth, that they did not see the accused do the deed; and that they know nothing about it; but they will nevertheless be guilty of the perjury in swearing that they are the persons who are known to have seen, or who may have already sworn before the committing officer that they did see, the accused do the deed.

In the case of Government *versus* Bukhory, volume 4, page 260, of the Nizamut Adawlut Reports, three judges held that a witness swearing falsely regarding his own name, is a fact material to the issue of the case.

The *futwa* of the law officer acquits the accused. I dissent from it entirely, and I doubt very much whether it is a true and proper exposition of the Mahomedan law.

Giving the right name of the father forms no excuse for giving a false name. If this were the case, it would lead to the most serious consequences among brothers, and among persons the sons of fathers bearing the same name. Moreover, in the case quoted, the prisoner, being the brother of a witness named in the calendar, must, I imagine, have given the true name of his father.

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The rest of the *futwa* appears to me to strike at the root of the administration of all justice. So far from the accused being at all abashed or intimidated by entering the presence of a European judge, he was smirking and particularly forward in his manner, and the supposition of timidity and confession is inconsistent with his voluntary appearance in court. The only motive I can imagine to account for the conduct of the prisoner is, that he presented himself to give evidence out of sheer officiousness and forwardness.

I have some difficulty in proposing the amount of punishment. Those witnesses, who are the accused's brother villagers, think little of the crime the accused has committed, sympathise with him, and were most unwilling to give evidence in any way calculated to cause his conviction. The levity with which the crime is thought of by the people, appears to me to call for some severity of punishment. The end of punishment is the prevention of crime; and where the moral sensibility of the people is so inert, it becomes necessary to act on their fears by some severity. A sentence of imprisonment, with labor, for one year, will be a severe punishment for a person in the prisoner's station of life, and will, I hope, be sufficient to deter others committing the crime under similar circumstances.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The deposition made by the prisoner under the name of Bhooca Gazee, is with the *nuthee*, as also that of Bhooca Gazee himself in this case; but I can find no deposition of Bhooca Gazee made in the trial of Mahomed Nukee on a charge of wounding with intent to kill. That was what I wished to see; but as it is possible that no such deposition was ever taken, I think it inexpedient to make a further call upon the sessions judge.

A witness is of course punishable, if it be proved that he has falsely personated another, but I think there is good reason in this case for doubting any intentional false personation.

There would appear to be no sufficient motive to induce the prisoner to pass himself off as Bhooca Gazee, for that individual was himself in attendance. The prisoner therefore could be conferring no obligation on him, while, if not acting in concert with him, he ran the risk of immediate detection.

That the prisoner was not in attendance without cause, is evident. Bhooca Gazee states in his evidence, that he had been sent in by the police as a *sooruthal* witness, and Roshun Alee says that he (the prisoner) had come in because he was under recognizance to attend. Further, Saduk Alee deposes to having heard the prisoner say to the buxshee, that his name had not been asked when he was called in to give his deposition; and Mahomed Nukee speaks to this point, from his own knowledge.

It is admitted that the prisoner, when making his deposition, gave his father's name quite correctly; and it is not alleged that the evidence he gave in the case of Mahomed Nukee was false. It is

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not improbable that he was brought into court instead of Bhooca Gazee by mistake, and that the officers of the court, thinking they had the real Bhooca Gazee before them, put down that name as a matter of course, and merely asked the witness his father's name. Be this as it may, I think the evidence is not sufficient to place the guilt of the prisoner beyond doubt. I accordingly acquit him and direct his immediate release.

Present:

Sir R. BARLOW, Bart., *Judge.*

GOVERNMENT
versus
KISTO BAGDEE alias MORAY KISTO BAGDEE.

Hooghly. — 1853. March 22. Case of Kisto Bagdee, *alias* Moray Kisto Bagdee.

The prisoner, convicted of having belonged to a gang of dacoits, sentenced to imprisonment for life, with labor in irons, in transportation.

Crime Charged.—Having belonged to a gang of dacoits.

Committing Officer, Mr. S. Wauchope, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 18th March 1853.

Remarks by the officiating additional sessions judge.—The prisoner is committed under Act XXIV. of 1843, for having belonged to a gang of dacoits, and pleads "*guilty*". He made confessions before the commissioner for the suppression of dacoity to both the crimes charged, and the number of the dacoities in which he had participated, which amounts in the aggregate to fifty-five. Three of these detailed accounts were attested and proved in this court, and I thought it unnecessary to verify the rest, as the prisoner unreservedly admits all his confessions.

I convict him of the charge and recommend that he be transported for life, and sentenced to labor, in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—I confirm the proposed sentence, upon the grounds recorded by the sessions judge.

PRESENT:

J. DUNBAR, Esq., *Judge*.

SHEIKH MEEROO AND GOVERNMENT

versus

EMAUM KHAN (No. 10), SHEIKH SONAOOLLAH TALOOKDAR (No. 11), BAOOL DHOOLEE (No. 12) AND DAGOO FUQEER (No. 13).

MYMENSING.

1853.

March 23.

Case of EMAUM KHAN and others.

The sessions judge convicted the prisoners of dacoity, and sentenced them to imprisonment for eight years, with labor and irons. On appeal it appeared to the Court of Nizamut Adawlut, that the case was not properly one of dacoity, but rather of riotous assault and plunder, as laid in the second count of the charge in the calendar. The prisoners were therefore sentenced by the court to be imprisoned each for three years, and to pay a fine of rupees one hundred in lieu of labor.

CRIME CHARGED.—1st count, dacoity, by attacking the prosecutor's house at night armed with weapons, and plundering cash and property valued at rupees 31-8-0; and 2nd count, riotous assault with forcible plundering not amounting to dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. A. Abercrombie, assistant with magisterial powers, Jumalpore, Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 21st January 1853.

Remarks by the officiating sessions judge.—It appears from the evidence of the prosecutor, and the witnesses to the apprehension of the prisoners, that the prosecutor's house was attacked on the night of the 10th Aghun last, (between 3 and 4 o'clock in the morning,) by dacoits, mustering about sixteen or seventeen persons, who came up suddenly, armed with *lattees*, shields and *sulfees*, crying out *alee, alee, kalee, kalee;* and plundered his house of Company's rupees 18, some clothes and brass utensils, &c. The prosecutor states that they also struck him several times on the back, and also beat his brother, who was sleeping in the same house. On the dacoits attacking him, he (the prosecutor) gave the alarm, which roused his neighbours, and witnesses Nos. 1, 2, 3, 4, 5, 6, 7, 8, 16 and 18 immediately came up, and seeing the dacoits running away to the eastward, they chased them, and caught the prisoners Nos. 10 and 13, with two *lotahs*, part of the plundered property. These prisoners were armed with shields, *lattees* and a *sulfee*. The prisoner No. 11 was apprehended by witnesses Nos. 9 and 10, as they and others were running away, and prisoner No. 12 was apprehended by witnesses Nos. 11 and 12 at some distance from the prosecutor's house, in the act of making his escape. They were brought to the prosecutor's house and secured by the villagers till the arrival of the police. Witnesses, No. 1, Sheikh Kamal, No. 2, Sheikh Monglah, No. 3, Sheikh Lalloo and No. 4, Kaleenath Gooho, corroborate the prosecutor's statement, saying that they were roused by the dacoits crying out *alee, alee, kalee, kalee,* and the prosecutor calling out *dohaie,* when they caught the two prisoners (Nos. 10 and 13) and two *lotahs* were found lying on the ground, the prisoners being armed as described by the prosecutor. Witnesses Nos. 9 and 10

1853. March 23. Case of EMAUM KHAN and others.

depose to the apprehension of prisoner No. 11, saying that hearing the prosecutor's brother calling out *dohaie*, they came up with *lattees* in their hands, and seeing the people of the prosecutor's village chasing others and crying out that the dacoits were running off, they (the witnesses) caught the prisoner No. 11 as he was trying to escape, and made him over to those people. Witnesses Nos. 11 and 12 depose that they were roused by a noise in the prosecutor's village, and were coming up to see what was the matter, when observing three persons running off, chased by the people of the prosecutor's village, who were crying out for assistance as the dacoits were escaping, they (the witnesses) pursued them; they, however, succeeded in securing only one of them, the two others having escaped ere they could come up to them. The prosecutor and witness No. 17, Neelaram Malee Chowkeedar, reported the matter to the police mohurir, who had gone to Katchtolla on some business, and who went to the village on hearing of the affair and commenced his inquiries. Prisoner No. 10 before the police mohurir denied committing the crime, urging that he and the other prisoners with one Sheikh Ashuk, were asked by prisoner Bolyar Khan (No. 14, of the acquittal statement), to accompany him for the purpose of collecting the kazee's fees; that they arrived at the prosecutor's village at night, when No. 14 procured for them *lattees*, shields, &c., and had gone to the prosecutor's stable to watch him, and when he came out of his house they (the prisoners) caught him, and demanded the fees due; that the prosecutor then began to cry out that his house was attacked by dacoits, when the villagers collected; and that as they were running off, they were caught and ill-treated by the prosecutor and the villagers, who afterwards falsely denounced them to the police as dacoits. Nos. 11 and 12 also made the same defence before the mohurir; No. 13 denied the charge, saying that he was going to Dhunbaree, when he was caught by the people of the prosecutor's village as being one of the party of prisoner No. 14, and was falsely charged as a dacoit, and that he was on the night in question at his own house. Before the joint magistrate of Jumalpore, all the prisoners denied their answers taken by the police mohurir, saying that they did not commit a dacoity. No. 10, urging that he was seized by the villagers as being one of Meher Khan's people, was ill-treated by them, who took from him two rupees and three annas in pice, and was falsely accused of being a dacoit. No. 11, that he was going to visit his brother Chand Talookdar, who was confined in jail at the station, when he was caught by the prosecutor and his villagers as one of Bolyar Khan's (No. 14's) party. No. 12 urged, that they were returning from a feast when they were caught, because they were with No. 14. No. 13, that he was going to Dhunbaree, when he was caught and falsely denounced to the police as a dacoit. In the sessions court the prisoners denied the charge, urging that the

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answer they made to the police was extorted by ill-treatment; No. 13 adding, that he was going to Gopalpore, when he was falsely caught as being one of the persons on the part of prisoner No. 14. The prisoners named witnesses to character, who, however, could say nothing in their favor. It has been clearly proved that the prisoners were secured immediately as they were running away on the prosecutor giving the alarm, and the plea of the prisoners that they were sent or taken there by Bolyar Khan (No. 14 of the acquittal statement) for the purpose of arresting prosecutor as a defaulter of kazee's fees, is not borne out either by evidence or the probability of the case; and it is extremely singular that they should go to arrest a defaulter at night thus armed. Considering, therefore, that the charge of dacoity has been fully proved against them, I sentenced them to be imprisoned each for the term of eight (8) years, with labor in irons. I tried the case under the provisions of Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The assault took place just before day-break, and it is admitted that the attacking party had no *mussals*, and did not attempt to resist the villagers when put to flight, and pursued. Three of the prisoners in the Mofussil confessed to having joined in an illegal attempt to carry off the prosecutor, but altogether denied the charge of dacoity. Looking at all the circumstances, I do not think that the case is properly one of dacoity; it seems to me to come rather under the 2nd count of the charge.

The prosecutor and his brother swear that certain articles of property were carried off, and this is probably true, but there is no evidence beyond their respective assertions to prove that any personal violence was done to the prosecutor or his brother, and the darogah reported immediately after the occurrence that he could find no marks of violence on the prosecutor's body. I convict the prisoners on the second count of the charge, and sentence them each to be imprisoned for three years, with labor, the labor commutable to a fine of rupees one hundred (100) each, to be paid within one month.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

JUSEEMOODDEEN KHAN AND GOVERNMENT *versus* SHEIKH DILLOO, ALIAS DIL MAHOMED.

MYMENSING.

1853.

March 23.

Case of SHEIKH DILLOO, *alias* DIL MAHOMED.

Prisoner, charged with burglary and knowingly receiving property obtained thereby, convicted and sentenced to five years' imprisonment, with labor in irons.

CRIME CHARGED.—1st count, burglary in the house of the prosecutor, and theft of cash and property valued at rupees 155-15¼; 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—Burglary and knowingly receiving property obtained thereby.

Committing Officer, Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 29th December 1852.

Remarks by the officiating sessions judge.—On the night of the 13th August last, the prosecutor's house was burglariously entered by cutting the *tattee* of the house, and a *petarah* carried outside, which was forced open, and property, consisting of clothes and money, amounting to Company's rupees 155, carried off. The next morning the prosecutor reported the matter at the thanna, but could not then name any one whom he suspected of committing the burglary, but he was making inquiries himself, and on getting a clue would inform the police. From what he heard from the prisoner's brother Alliah, he reported, on the 17th August, that his suspicion fell on him and the prisoner, and requested the prisoner's house to be searched, which was accordingly done, when the clothes, gold ornaments, &c., marked from Nos. 1 to 30 were found in his house, and which were recognized by the prosecutor and his witnesses Nos. 12, 13 and 14, as a part of the stolen property. The prisoner confessed in the Mofussil and before the magistrate to the theft and implicated No. 14 (of the acquittal statement), and which confessions were verified on oath by the subscribing witnesses as having been voluntarily given. In the sessions the prisoner denied the charge, urging that the case had been got up against him by the prosecutor from malicious motives; that in Assin last, he brought a charge of assault against one Fyzoo Turufdar and witness No. 3 and others, and appointed prosecutor's brother-in-law to conduct the case; that the said *mookhtar* having gone away without informing him, the prosecutor, he alleged, consented to carry on the case if he paid him for his trouble, which he says he did; that in Sawun the prosecutor requested him to take some clothes to his house where he would meet Turreekoollah the *mookhtar*, and told him to return on Monday; that he (the prisoner,) then left rupees 5 with prosecutor, went home and took the clothes

with him to his own house to keep, instead of to the prosecutor's; that he returned on the Monday and was caught as a thief on Wednesday following; but although he named witnesses to prove that the prosecutor gave him the clothes to keep, he signally failed to establish the same; his witnesses denying all knowledge of the matter. The jury recorded a verdict of "*guilty*" against the prisoner, in which I concurred, not only as there were no grounds to doubt that his confessions in the Mofussil and before the magistrate were otherwise than voluntarily given, but also from the property having been found in his house and proved to belong to the prosecutor. The prisoner moreover is a man of very bad character and was sentenced by my predecessor in 1849 to five (5) years' imprisonment for a similar offence, but was acquitted by the Nizamut Adawlut; the court then not having been satisfied with the evidence against him, and he has also been confined in jail in default of furnishing security for good conduct.

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Case of SHEIKH DILLOO, *alias* DIL MAHOMED.

Sentence passed by the lower court.—Five (5) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The proof is complete. Appeal rejected.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND MEER CHANDALI

versus

NEHAL SHEIKH.

BEERBHOOM.

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March 24.

Case of NEHAL SHEIKH.

Prisoner, convicted of dacoity, sentenced to twelve years' imprisonment, with labor in irons.

CRIME CHARGED.—1st count, dacoity with wounding in the house of the prosecutor's master, and plundering property to the value of rupees 4,891-0-6; and further wounding the witnesses Gopal Mohut, Chytun Dome, and Fuqeer Sha; and 2nd count, knowingly receiving and having in his possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—Dacoity with wounding.

Committing Officer, Mr. G. Hewitt, deputy magistrate of Cutwah, Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 18th January 1853.

Remarks by the sessions judge.—The prosecutor's master's house was attacked by some fifty or sixty dacoits on the night of the 10th November last, and plundered of property valued by the owner at rupees 4,891-0-6.

As the dacoits retreated, they were followed by several villagers, who hung upon their rear, and carried on a kind of running skirmish,

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Case of NEHAL SHEIKH.

as opportunities offered, in which they received several slight injuries. After a short time one of the dacoits, laden with a portion of the booty, happened to lag behind, when he was instantly set upon by the chowkeedars and the other pursuers, and cut down. He was then taken back captive to the village, and on the arrival of the darogah the next morning, he confessed to having joined in the dacoity and plundered the prosecutor's master's house.

The prosecutor identified all the articles which were found on the prisoner when he was apprehended.

The prisoner denied the crime before the magistrate.

In this court he pleaded "*not guilty*," but offered no defence, further than that he was insensible when he was examined by the police. The evidence for the defence in no way exculpates the prisoner ; it merely refers to his having given out that he was going to purchase cattle.

There can be no doubt, I think, of the prisoner's guilt. He was one of a very large gang and was captured, though not till he had met with some rough treatment at the hands of the prisoners, whilst in the act of retreating from the village where the dacoity had been committed, with a considerable share of the plundered property on his person. His Mofussil confession is satisfactorily attested, and corroborated by circumstantial evidence. I therefore convict the prisoner No. 12, Nehal Sheikh, of dacoity attended with wounding, and sentence him to twelve (12) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) —The proof of the prisoner's guilt is full and complete.

The court see no reason to interfere with the sentence passed upon him by the sessions judge.

PRESENT :

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT AND RUGHOONATH SINGH

versus

GOUR DUTT HOLDAR (No. 3), BRIJONATH MITTER (No. 5), KRISTO CHUNDER CHUCKERBUTTY (No. 6), DHEERA LETE (No. 7), BAMAH DOME CHOWKEEDAR (No. 12), NEERUN SOW (No. 13), DHUNKISTO SOW (No. 14), SREEDHUR SOW (No. 19), GOPAL SOW (No. 20) AND CHOTARAM SADHOO (No. 21).

BEERBHOOM.

1853.

March 25.

Case of GOUR DUTT HOLDAR and others.

On appeal two of the prisoners were acquitted; the sentences proposed on the other two being affirmed.

CRIME CHARGED.—1st count, Nos. 3, 5 to 7, 12 to 14 and 19 to 21, dacoity in the house of Rughoonath Singh, prosecutor, from whence property, valued at rupees 3,946-4-0, was plundered; 2nd count, Nos. 3 and 5 to 7, accomplices in the abovementioned dacoity; 3rd count, Nos. 3, 5 to 7, 13, 14, and 19 to 21, knowingly receiving property acquired by committing the abovementioned dacoity; and 4th count, Nos. 12 and 21, privity to the abovementioned dacoity.

CRIME ESTABLISHED.—Nos. 3, 5 and 7, dacoity in the house of the prosecutor. No. 12, accessary to the above crime before the fact; and Nos. 6, 13, 14, and 19 to 21, knowingly receiving property obtained by dacoity.*

* *From the Register of the Nizamut Adawlut, to the Officiating Sessions Judge of Beerbhoom, No.* 108, *dated* 21*st January* 1853.

The Court, having had before them the statements connected with the sessions of jail delivery, held by you in the month of December last, and referring to the case noted in the margin, observe that the prisoner No. 12, Bamah Dome, has been convicted of what he was not charged with. He was charged in the first count, with dacoity, and in the fourth count, with privity to it, but he has been convicted of accessaryship before the fact, which is a crime, as explained in paragraph 4, of Circular Order, No. 8, of the 7th June 1847, of a higher degree than privity. You are requested to amend your finding against the prisoner Bamah Dome, and pass sentence on him with reference to the offence of which you consider him guilty, on the charges preferred in the calendar, reporting the same for the information of the Court.

Gour Dutt Holdar and others, entered in Statement No. 6.

From the Officiating Sessions Judge of Beerbhoom, to the Register of the Nizamut Adawlut, No. 17, *dated* 28*th January* 1853.

I have the honor to acknowledge the receipt of your letter, No. 108, dated 21st instant, and in reply to state, that I found the prisoner guilty of being an accessary before the fact, he being charged in the magistrate's calendar, in the first count with dacoity, on the principle that a prisoner may be convicted as an accessary when arraigned as a principal.

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Case of GOUR DUTT HOLDAR and others.

Committing Officer, Mr. R. Abercrombie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, officiating sessions judge of Beerbhoom, on the 20th December 1852.

Remarks by the officiating sessions judge.—The prosecutor's house was entered by a gang of, it is stated, fifty or sixty dacoits, on the night of the 26th Assin, or 10th October 1852, and property plundered to the value of rupees 3,946-4-0; some of the prisoners were apprehended in a very clever manner.

It appears that late in the evening of the 26th Assin, a party were observed issuing from the village of Beetoora, which is three *coss* distant from the village of Hurreesarrah, where the prosecutor resides, in a way that, considering the number of dacoities that had occurred in the neighbourhood, roused the suspicions of the head men of the village, and they determined to ascertain who amongst the inhabitants were absent from their houses. Five persons, *viz.*, Gour Dutt, Mudhoo Dome,* Brijonath Mitter (prisoners Nos. 3, 4 and 5), Dwarka Dome and Mahanund Dome, were not to be found; and in the houses of each, three people were appointed to watch till the absentees should return. Very early in the morning, that is, about four *ghurries* before dawn, the prisoner Gour Dutt returned home with a bundle of clothes, and was immediately laid hold of by the three watchers, witnesses Nos. 2, 3 and 4, when he acknowledged that he had been out on a dacoity expedition to the village of Hurreesarrah, and that the bundle contained his share of the plunder. The uproar which was raised on the capture of Gour Dutt appears to have put the prisoner Brijonath Mitter on his guard; for, as he approached his house, he caught sight of the party on watch, and forthwith took to his heels. He was hotly pursued, and in his flight was seen to throw away a piece of cloth, which was picked up and afterwards identified as the property of the prosecutor; but he contrived to effect his escape, and to elude the pursuit until late in the day. Hurreesarrah is under the jurisdiction of thanna Moulessur, Beetoora under that of Sooree. Information of the capture was immediately forwarded to the darogah of the latter, who repaired to the spot even before the occurrence of the dacoity was reported to him. Gour Dutt confessed to having committed the dacoity before the darogah on the 11th and before the magis-

From the Register of the Nizamut Adawlut, to the Officiating Sessions Judge of Beerbhoom, No. 145, dated the 1st February 1853.

The Court, having had before them your letter, No. 17, dated the 28th ultimo, desire me to observe that the reasons now given by you for convicting Bamah Dome, (prisoner No. 12, of Statement No. 6, for December last,) of being accessary to dacoity before the fact, should have been stated in your remarks on the case, entered in column 12 of that return.

Acquited by the lower court.

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Case of Gour Dutt Holdar and others.

trate on the 13th October. In this court he denied the charge, and disavowed his previous confessions, and stated that Sreeram Mundul, (witness No. 2) and Mehal Mundul (witness No. 4) went to his house at midnight, dragged him outside, and, throwing a bundle at his feet, called out that he was a thief, and that then all the villagers began beating him: he added that Ram Lochun Roy and Sreeram Mundul gave him an assurance that if he repeated the same story he had told in the Mofussil before the magistrate, he should be released. His witnesses state that he was a respectable man; but beyond this they do not exculpate him from the charge: indeed, one of them Satoo Chuckerbutty, a plain-spoken old Brahmin, corroborates the account given in the case for the prosecution.

Brijonath Mitter (prisoner No. 5) has denied throughout; and in this court pleaded an *alibi*, which was not established by the two witnesses called by him. There can be no doubt that he was absent from home on the night of the occurrence, and he is named by Gour Dutt as being one of the gang. The evidence of Gopal Gope, Sreeram Gope, and Madhub Chowkeedar, the three watchers, and of Deenoo Gope, prove to my satisfaction that he returned to his village in company with Gour Dutt, and that, finding the villagers on the alert, and his own house occupied by watchers, he ran off, and in his flight threw away a piece of cloth, which was identified as belonging to the prosecutor.

Kristo Chunder Chuckerbutty (prisoner No. 6) was apprehended on the 13th October on the strength of the confession of prisoner No. 7, and confessed before the darogah on the same day to having joined in the dacoity; he also pointed out a silver anklet which he had received as his share of the booty, concealed within a deserted house. In the magistrate's court he disavowed his Mofussil confession, and he did the same before me, stating that he did not point out or produce the silver anklet, but that Ram Coomar Chowkeedar dug it up. He also pleaded an *alibi;* but the only witness he called knew nothing at all about him.

Dheera Lete (prisoner No. 7) was apprehended on the 13th October, confessed the same day before the darogah, and again on the 15th before the magistrate. He also produced a large brass *ghurra* from a tank, within the garden of which he is the *malee.* In his defence he disclaimed both confessions, and said he had been beaten by the darogah. He called four witnesses to prove, that he did not go to the garden for three days; one of them is since dead, two are his near relatives, and the fourth knows nothing. There is no reason whatever to doubt his guilt.

Bamah Dome Chowkeedar (prisoner No. 12) was seen under suspicious circumstances on the night in question by the witness No. 1, and when taken into custody, confessed before the darogah, and afterwards before the magistrate, to what amounts to accessaryship before the fact. Both confessions are well-attested; and I see no

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reason to discredit them. In this court he disavowed them both; and pleaded that he was on watch in his own village on the night in question. His witnesses depose to his having been there at about one and a half or two *puhurs* of the night, when the noise which generally succeeds a dacoity was audible in the direction of Hurreesarrah; but this was probably after the crime had been perpetrated, and just before the time they speak of, he is proved to have been absent.

Neerun Sow and Dhunkisto Sow (prisoners Nos. 13 and 14) were also cleverly taken. Dholegobind Chuckerbutty (witness No. 5) states that about four *ghurries* of the night of the 19th or 20th Kartick, he was passing near the prisoners' house, when he saw them coming out with a bundle, and that directly they caught sight of him they hurried in again. He then went and called the witnesses Nos. 6, 7, 8, 9 and 10, to assist him in watching, as he suspected they were up to some evil. Very shortly after they espied prisoner No. 14 leaving the house with a bundle. After allowing him to go a short distance, they went up and stopt him, when prisoner No. 13 came to the rescue with a *lattee*, but they managed to secure them both with the articles numbered from 19 to 26, which were afterwards identified as the property of the prosecutor. Their defence in this court consisted of a simple denial, and they called no witnesses. Prisoner No. 14 stated his age to be five years; but he is evidently a youth sixteen or seventeen years old.

Sreedhur Sow and Gopal Sow (prisoners Nos. 19 and 20) were suspected by the prosecutor and taken into custody on the 5th November, and when their house was searched, property, consisting of pieces of cloth numbered from 29 to 35 was found and immediately recognized by the prosecutor. The prisoners have denied all knowledge of the dacoity throughout, and in their defence have claimed the cloth as their own property; but Sreedhur Sow called no witnesses; and of the two witnesses called by Gopal Sow, one was not forthcoming, and the other could say nothing in favor of the prisoner.

Chotaram Sadhoo (prisoner No. 21) was arrested under the following circumstances:—He was seen by the witnesses Nos. 11, 12, 13, 14 and 15 walking towards his village with a large bundle, when, instead of following the path which would have led him close up to where some of the witnesses were standing, he quitted the regular beaten track and went across the *khets*, with the evident intention, as it seemed to them, of avoiding a meeting. They therefore went up and laid hold of him, when he acknowledged that he was in fault, and prayed them to let him go, and not disgrace him; but they carried him off to the village, and kept him in custody until the arrival of the darogah on the following day, when the articles of cloth marked from Nos. 36 to 43, were found in the bundle with which he was captured, and which were afterwards identified by the prose-

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cutor. He was apprehended on the 11th November, and was examined by the magistrate on the 15th idem, when the answer he gave was tantamount to a confession of privity to the dacoity in the house of the prosecutor. In his defence he stated that he was on his way home from the town of Sooree with some sweetmeats which he had purchased there, when he was met by Thakoor Dass, (witness No. 11) and four others, who threw a bundle down before him, taxed him with robbery, and beat him till he was insensible. He named six witnesses to speak in his favor, of whom one is dead, one knows nothing, and this is the only witness he originally called in his defence; three are the same as those called by prisoner No. 17 (released,) and they with the sixth do not, by any means, disprove the satisfactory and respectable evidence given against him on the part of the prosecution.

On the grounds stated above, I convict Gour Dutt (prisoner No. 3), Brijonath Mitter (prisoner No. 5) and Dheera Lete, (prisoner No. 7), of the crime of dacoity in the house of the prosecutor, and sentence them to ten (10) years' imprisonment, with labor in irons. Bamah Dome Chowkeedar (prisoner No. 12) of being an accessary to the above crime before the fact, and sentence him to eight (8) years' imprisonment; Kristo Chunder Chuckerbutty (prisoner No. 6), Neerun Sow (prisoner No. 13), Sreedhur Sow (prisoner No. 19), Gopal Sow (prisoner No. 20) and Chotaram Sadhoo (prisoner No. 21), of knowingly receiving property obtained by dacoity, and sentence them each to seven (7) years' imprisonment; and I also convict Dhunkisto Sow (prisoner No. 14) of the same crime, and in consideration of his youth, sentence him to three (3) years' imprisonment; all with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—Gour Holdar (No. 3), Bamah Dome (No. 12), Neerun Sow (No. 13) and Dhunkisto Sow (No. 14) have appealed. The appeal of the other prisoners connected with this case was disposed of by Mr. Mytton, on the 19th of February 1853. See his remarks at page 215 of the Decisions for that month.

The prisoners Gour Holdar and Bamah Dome plead that they were maltreated by the police, and forced to confess, but the proof against them is ample. The prisoner No. 3 was apprehended with a bundle of clothes on the night of the dacoity, and acknowledged that he had been on a dacoity expedition, and that the bundle contained his share of the plunder. He repeated his confession to the police and the magistrate, and the articles were identified by the prosecutor.

Bamah Dome was also apprehended on the night of the dacoity under very suspicious circumstances, which, taken with his well-attested confessions to the darogah and the magistrate, leave no doubt of his guilt. I confirm the sentence passed on these prisoners.

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Case of GOUR DUTT HOLDAR and othars.

I am not satisfied with the evidence against the other two prisoners. They have denied their guilt throughout, they were not implicated in the confessions of the other prisoners, and they urge that the villagers, with whom they are at enmity, have maliciously conspired to ruin them.

They were not apprehended until the 3rd of November, or twenty-three days after the occurrence of the dacoity. They were taken, it is alleged by the witnesses, at night, in the act of coming out of their house with a bundle. The witnesses watched them, suspecting that they were up to some evil. No reason for suspecting them is given, and the seizure is generally open to great suspicion. I cannot convict on the evidence; it is improbable and doubtful. I acquit and release these prisoners.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

*GOVERNMENT

versus

RADHAI BAGTEE.

WEST BURDWAN.

1853.

March 25.

Case of RADHAI BAGTEE.

The evidence for the prosecution and the prisoner's confession before the deputy magistrate, held to afford sufficient proof against him. Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the house of Cheeroo Dutt, and plundering therefrom property of the value of rupees 125-0-6; 2nd count, belonging to a gang of dacoits; and 3rd count, knowingly receiving and keeping in possession property obtained by the abovementioned dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Baboo Jogesh Chunder Ghose, deputy magistrate of Gurbetta, West Burdwan.

Tried before Mr. E. Bentall, additional sessions judge of West Burdwan, on the 5th November 1852.

Remarks by the additional sessions judge.—On the night of the 24th of May, a dacoity took place at the house of Cheeroo Dutt, in the village of Dangurra, in the thanna of Bishenpore, and his loss is said to have been about rupees 125. The dacoits appeared by their foot marks to have gone off in the direction of the village of Hingoorea, and the darogah accordingly went there and called for several of the villagers, and left them in the charge of the village police, and also left a thanna burkundauz to do what he could without giving him any instruction or warrant; he then went to the village of Deeher, and thence sent ten or eleven *ghatwals* to assist the burkundauz, and the next day the burkundauz went with a party of police to the village of Ramijsurkoree, which is three-eighths or half a *coss* off, to the house of Fuqeer Bagtee (prisoner No. 31 acquitted and reported in Statement No. 8), whom he took to Hingoorea without apparent

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Case of RADHAI BAGTEE.

cause for suspecting him, and who accused the prisoners Nos. 28, 29 and 30 (acquitted), who had been previously left by the darogah detained in the charge of the village police. The whole case rests on this chain of unfounded accusations.

The prisoner No. 27, Radhai Bagtee, having been apprehended according to the record on the 27th May, produced some brass vessels from another man's sugar-cane field, and confessed before the darogah, that he got them at the dacoity, and on the 28th of May, he stated before the deputy magistrate, that he was taken by force to the dacoity, and that he got some of the spoil and hid it in the field. His defence is, that he was beaten ; but he could call no witnesses to say so.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. A. J. M. Mills.)—The prisoner has appealed. He pleads that the darogah extorted his confession from him, and placed the property in the place from which he was made to produce it. There is no proof of this accusation, and further the prisoner confessed before the deputy magistrate. The other prisoners (ten in number) connected with this case were released by the sessions judge. He remarked that some of them were possibly engaged in the dacoity, but the evidence brought against them was not trustworthy. I certainly see no reason to doubt the facts sworn to by the witnesses as regards this prisoner. The confessions of the prisoner are proved to have been voluntarily and freely made, and the evidence to his producing the stolen brass utensils from a sugar-cane field where he had buried them is distinct. I reject the appeal.

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

CHAND KOIBURT (No. 4) AND KANOORAM KOIBURT (No. 5).

MYMENSING.

1853.

March 25.

Case of CHAND KOIBURT and another.

The prisoners were held to have perjured themselves. Appeal rejected.

CRIME CHARGED.—No. 4, perjury, in having, on the 21st January 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the joint magistrate of Jumalpore, that Basheeram Koiburt, Kanooram Koiburt and Bishnoo Koiburt, are not related to him, such statement being false and important to the issue of the case;* No. 5, perjury, in having, on the 21st January 1853, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the joint magistrate at Jumalpore, that Chand Koiburt is not his own brother, such statement being false and important to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer, Mr. A. Abercrombie, assistant with powers of joint magistrate Jumalpore, Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 4th February 1853.

Remarks by the officiating sessions judge.—Prisoner No. 4 complained against one Jhalee Sheikh and others in the foujdaree court for attempting to commit an affray, and named the other prisoners as witnesses; No. 4 as well as the others deposing, on solemn declaration, that they were unconnected with each other, as entered in the charge. On this Sheikh Jhalee brought to the notice of the joint magistrate, that the parties had concealed their relationship. That officer directed the darogah to inquire into the matter; which he did, and he reported that they were relations. The prisoners acknowledged before the darogah and the joint magistrate that they were related to each other, and had concealed their relationship at the

* With reference to the charge, the following order, No. 314, dated 2nd April, was, on revision of the statements for February 1853, communicated to the sessions judge.

Para. 1.—The Court having had before them your letter, No. 42, of the 22nd ultimo, submitting the statements connected with the sessions of jail delivery, held by you in the month of February last, and observing that the concluding part of the charge in the cases noted in the margin, is not properly worded, direct me to call your attention to Circular Order, No. 10, dated the 23rd July 1847, and to request that, in framing charges in cases of perjury in future, you will adhere strictly to the form therein prescribed, according as one or other form may be applicable to the nature of the particular case under trial.

Chand Koiburt and Kanooram Koiburt, Nos 4 and 5, of Statement No. 6; Bishnoo Koiburt, No. 7, of Statement No. 8.

1853.

March 25.

Case of CHAND KORBURT and another.

instigation of Kurreemoollah, *talookdar*, whom No. 4 had appointed as *mookhtar* to conduct the prosecution against Jhalee Sheikh, which fact, however, they could not prove. In this court Nos. 4 and 5 confessed, and acknowledged their Mofussil and foujdaree confessions, No. 5 urging that he was an ignorant person (No. 4, Basheeram Koiburt, absconded from *hajut* while under commitment before the trial came on.) The *futwa* of the law officer convicts the prisoners of perjury, in which I concurred. It is evident that the object of the prisoners in concealing their relationship was that greater credit should be attached to their evidence; and the fact of their having been relations, and their having wilfully and deliberately concealed it in their depositions before the court, is fully proved, not only from their own confessions, but also from the evidence of witnesses Nos. 7, 8, 9, 10, 11, 12, 13 and 14, and the mohurir (witness No. 19) who took down their original depositions.

Sentence passed by the lower court.—Three (3) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoners have appealed. They state, that they did not understand the question put to them by the magistrate, and intended merely to deny their connexion with each other in business, and not their relationship.

This plea is inadmissible. Their guilt is clearly established; they swore falsely in order to obtain greater credit being given to their evidence. I reject the appeal.

PRESENT:

SIR R. BARLOW, BART., AND J. DUNBAR, ESQ., } *Judges.*

GOVERNMENT
versus
BHOOLOO PULLEE.

DINAGEPORE.

1853.

March 28.

Case of BHOOLOO PULLEE.

The prisoner was sentenced to death, for killing his wife, seemingly actuated thereto by motives of jealousy, for which, however, no good grounds were apparent.

CRIME CHARGED.—Wilful murder of Soomittra Rundee, his wife.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 12th February 1853.

Remarks by the sessions judge.—The prisoner was charged with the wilful murder of his wife, Soomittra Rundee, on the night of the 10th January 1853, corresponding with the 28th of Poos 1259 B. S. Juggernath, who lived next door to the prisoner, heard a noise of voices after midnight, and on going out found, under a tree

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in front of his house, the prisoner standing and the deceased fallen. The prisoner when challenged mentioned his name, said he had killed his wife, and then struck Juggernath a blow on the right cheek with a heavy stone pestle. Juggernath called to the neighbours, who came to the rescue and seized the prisoner, who again said that he had killed his wife, who was then unable to speak, and died in about an hour. The prisoner confessed in the Mofussil to having taken his wife to Juggernath's house, and there killed her with several blows of a stone pestle, being enraged, because Juggernath frequently said that when the prisoner died he would take his wife, and she told him that Juggernath always twitted her, by singing and grinning, when they met. In the foujdaree he added a little to this, stating that his wife had said he had better kill her as she was virtuous, and Juggernath therefore wished for his death, and that he found the stone pestle at Juggernath's door. On his trial before me he said that his wife had frequently spoken of this Juggernath's matter, and on that night wished to go to his house, that the prisoner might ascertain whether it was founded on truth or not; that he proposed doing so next day, but she insisted on going immediately; that she called Juggernath, who gave no answer, until she abused him, when he abused her also, and he, the prisoner, endeavored to take her home; that as she would not go, he took up what he then supposed to be a clod, but next day found to be a stone; that he threw it at her, and it struck her on the cheek when she fell; that he told Juggernath she was dead, but he did not come out; that Juggernath's wife came and stood by the deceased and the neighbours assembled.

The civil surgeon states that "deceased had met with death from an extensive fracture of the skull, which had been actually beaten in by blows from some heavy weapon, or very likely by the stone now produced in court." The stone weighs fifty *tolas*, and from Juggernath's evidence, there can be no doubt that the prisoner struck his wife with it immediately before he struck the witness. The prisoner's Mofussil and foujdaree confessions are clearly proved, and the alteration in his confession on trial is evidently intended to throw doubt on the evidence of Juggernath and his neighbours, who came to his rescue, and to make out that he killed his wife by accident. Juggernath, maternal uncle of the prisoner, is an old and respectable-looking man, with a wife and family of his own, and it is difficult to account for the prisoner's feelings of jealousy towards him; but I see no reason to doubt the evidence of Juggernath or the other witnesses, who speak to the previous good character both of the prisoner and the deceased. It is very possible that the prisoner may have had cause for jealousy in some other quarter, and that the charge against Juggernath was made because the murder was discovered through him. The *futwa* of the law officer convicts the prisoner, and declares him liable to *kissas*, in which I concur; and not seeing

any palliating circumstance, I recommend that he be sentenced to suffer death. 1853.

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Case of BHOOLOO PULLEE.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. Dunbar.)—SIR R. BARLOW.—There is not the least doubt that the prisoner killed his wife by inflicting blows on her head with a stone, upwards of a pound in weight, and no sufficient grounds are shown to prove that he was justified in his suspicions of her being unfaithful to him. She was a child of about ten or eleven years of age, and so far as the evidence goes, bore a good character, and never gave the prisoner any cause for jealousy, though he in his defence states that she used to flirt with the witness Juggernath; this plea however he does not prove, nor does he cite any witnesses on his part. I see no reason for a mitigated sentence, and would sentence the prisoner capitally.

MR. J. DUNBAR.—The prisoner admits in his confessions that there was no illicit intimacy between Juggernath and his wife; he alleges that he killed her at her own request, as she was afraid of falling into the power of Juggernath should she become a widow. I disbelieve this plea; but even if it were true, it would not palliate the guilt of the prisoner. I concur in the sentence of death.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT AND SHAHBAZ

versus

AKOOL NOSYA (No. 2), NEKI NOSYA (No. 3), BONCHA NOSYA (No. 4), ANUND MOHUN SHA (No. 5) AND CAO NOSYA (No. 7).

RUNGPORE.

1853.

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Case of AKOOL NOSYA and others.

Evidence to recognition of persons and property rejected, on grounds assigned.

CRIME CHARGED.—1st count, having, on the night of 10th October 1852, corresponding with 26th Assin 1259 B. S., committed dacoity attended with wounding, and plundered property valued at rupees 114 from the house of the prosecutor; 2nd count, being accomplices in the said crime; 3rd count, having unlawfully received property acquired by the abovementioned dacoity, knowing it to have been so acquired; and 4th count, having belonged to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer, Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. T. Wyatt, sessions judge of Rungpore, on the 28th December 1852.

Remarks by the sessions judge.—On the statement of the prosecutor (whose house was robbed) and the evidence adduced, it was

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proved that, on the night of the 26th Assin 1259 B. S., corresponding with the 10th October 1852, while prosecutor was sleeping in the veranda of the southern compartment of his house, eight out of thirty dacoits, with their faces disguised, came and bound him hand and foot, securing him to a post of the veranda, and began to beat him, demanding his money, when he pointed to a box in the eastern compartment which the robbers (some two who kept hold of him) broke open and plundered it of various property, estimated at rupees 114. Prosecutor states that when the robbers were binding and beating him, by the light of torches he identified all the prisoners (who lived in different villages, from one quarter to one *coss* off,) with five other persons, who are absent, and that on the implication of these prisoners by the prosecutor they were apprehended, when prosecutor heard them confess, and saw them produce the plundered property.

The confession, Mofussil and foujdaree, of prisoner No. 2 was proved to have been voluntary. The alleged plundered property No. 1 consisted only of a *chudder*, which was not susceptible of identity. The Mofussil confessions of prisoners Nos. 3, 4, 5 and 7, were equally proved, and various property, identified as the prosecutor's, was proved to have been produced by prisoners Nos. 3, 5 and 7.

In his defence, prisoner No. 2 denies his Mofussil confession, which he states was extorted, and that his foujdaree confession was copied from the Mofussil one, and that the *chudder*, alleged as plundered, belongs to him. His witnesses (save one, his brother, to the identity of the *chudder*,) fail to prove his allegations.

Prisoner No. 3 denies his Mofussil confession, which was alleged to have been extorted, but of which he has no proof; denies any plundered property having been produced by him outside his house; states that the darogah confined him, twice searched his house, and through fraud produced property, to whom it belongs he knows not; that the prosecutor owing to a previous quarrel with him had, through malice, implicated him; that he was at home on the night of the dacoity. Prisoner's witnesses prove no one allegation.

Prisoner No. 4 denies his Mofussil confession; states that what the darogah wrote he cannot say; that he first wrote the confession of Akool (prisoner No. 3) after which he probably copied his confession from it. That the darogah and buxee confined him in the zemindaree cutcherry, and brought through some one a cloth belonging to his sister, which was claimed by the prosecutor on seeing it. The prisoner had no other evidence, but in proof of the *chudder*, which was established.

Prisoner No. 5 in his defence states, that he was at home on the night of the dacoity; that the buxee, after apprehending him, came to his house with some property, and buried it near his fence, stating that since his *ryot* Akool (prisoner No. 2) had confessed to the crime, if the property should come forth from his house, it would go

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hard with him. Prisoner states that on the following day the buxee beat him, which not having been able to endure, he produced the property. Prisoner calls eight witnesses, whose evidence avail him nought.

Prisoner No. 7 denies the charges, states he was at home on the night of the event, and that the buxee and others found a *hunslee* under a tree near his premises, which was said to be plundered property.

These allegations of the prisoner are not proved by his witnesses.

I tried this case alone, under Act XXIV. of 1843, and convicted the prisoners of dacoity without wounding.

Sentence passed by the lower court.—Each, eight (8) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The prosecutor says his house was attacked by dacoits at night; that they bound him hand and foot and beat him, and broke his head; they were about twenty in number, and of these twenty he says he recognized fourteen at the time of the occurrence, although they all had their faces painted white and black, with charcoal and chunam, and their heads tied round in the *galputtah* fashion, which conceals the contour of the face completely, and leaves only the features visible; recognition under such circumstances is in my opinion impossible, and I attach no credit whatever to the prosecutor's deposition to this effect; indeed, it is in my opinion so evidently given with another object than that of telling the truth, that I disbelieve the rest of his statement.

There is, however, other evidence.

The prisoner Akool confessed before the magistrate and has not appealed. The prisoner Neki is said to have produced much property from under the earth in a hole twenty-five yards from his house; he denies this.

The prisoner Boncha is said to have produced a *dhootee*, which the prosecutor recognizes as his own; I think the evidence to its being the property of the prisoner better than that of the prosecutor and his witness.

The prisoner Anund Mohun is said to have produced a *hunslee*, and a gold *nuth* and *jhoomka* from under the earth near his house; and he admits that it had been put there beforehand by the police, and on being ill-treated he dug it up.

The prisoner Cato is said, in the same way, to have produced certain broken *hunslees* from the earth; and his witnesses swear they saw some of the police people placing the things there during the night. All these prisoners live in the neighbourhood of prosecutor, and he says he knows them all, and his deposition is evidently distorted by malice, so much so, that the sessions judge has acquitted several persons, from whom property is stated to have been recovered and recognized by the prosecutor. The only evidence free from

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Case of AKOOL NOSYA and others.

suspicion in this case is the confession of Akool before the magistrate. I see no reason to interfere with the sentence passed upon him; but the whole of the rest of the case has the appearance of being got up. It is certain that prosecutor has sworn to property which is not his; and to persons whom he could not have recognized under the circumstances; and I believe that the property found, which was really prosecutor's, was previously secreted by the police or others for the purpose of fixing the crime on the accused. I acquit Neki, Boncha, Anund Mohun and Caô, and direct their release.

PRESENT :

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

v.

HARAN MULLAH (No. 3), NIMIE KIEBURT (No. 4), ANUND SHEIKH (No. 15), AND HURISH CHUNG (No. 16).

EAST BURDWAN.

1853.

March 28.

Case of HARAN MULLAH and others.

The prisoners' appeal was rejected, the truth of their pleas not being established.

CRIME CHARGED.—Burglary, attended with the robbery of property valued at rupees 600.

CRIME ESTABLISHED.—Burglary, attended with the robbery of property valued at rupees 600.

Committing Officer, Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, sessions judge of East Burdwan, on the 6th January 1853.

Remarks by the sessions judge.—This is a daring case of burglary attended with theft committed in the godown of an indigo factory. The perforation was made through a brick wall, and a chest of indigo, containing three maunds, thirteen seers, and valued at rupees 600, extracted and carried off. It is supposed that several persons were engaged in this work of plunder, for the stolen box is so heavy that it was with difficulty carried by six persons when brought into court. It was notwithstanding removed from the factory without hindrance or opposition, and securely deposited at some distance in the field, under a heap of cut grain, from whence it was recovered unopened. The evidence for the prosecution goes to prove the occurrence, and the voluntary admissions of crime by all the prisoners, both before the police and the magistrate. The witness Radhagobind Dutt, who was acting as the thanna mohurir at the time, was mainly instrumental in the capture of the robbers and recovery of the stolen property. In his deposition he states that on going to inquire into the matter he learned incidentally that the prisoner Haran Mullah (No. 3) had received an injury in his left hand, and at once arrested him, when he perceived marks of bruises

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Case of HARAN MULLAH and others.

along his fingers, as if caused by the pressure of some heavy weight falling or resting on them. He caused the arrest of the other prisoners, on hearing that they were the intimates and constant associates of the prisoner Haran. The prisoners deny the charge before this court, repudiate their confessions, and affirm that they never made any ; declare that they were cruelly beaten by the factory people on being arrested, and call witnesses, one to prove the alleged ill-treatment, another an *alibi*, and the others that they are persons of respectable character and good repute. These witnesses, however, for the most part, refuse to say anything in favor of the prisoners or the pleas they set up, and utterly fail to absolve them from guilt. The *futwa* of the law officer convicts all the prisoners of the charge on which they are indicted, on their voluntary confessions before the magistrate and the police, and declares them liable to discretionary punishment by *akoobut;* and I concur in the finding. The magistrate tendered pardon to the prisoners Anund Sheikh (No. 15) and Hurish Chung (No. 16), under Regulation X. of 1824, with the view of procuring the conviction of nine other persons, who confessed before the police, but denied before him: but the prisoners, though duly accepting the offer, failed to fulfil the conditions under which it was made, and declined to give the required evidence. The tender of pardon therefore was recalled under the authority of this court on a reference from the magistrate, and the prisoners dealt with as if none had been made.

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. W. B. Jackson.)—The prisoners Haran, Nimie, Anund and Hurish all confessed before the magistrate ; and although they in their petition allege ill-treatment by the police, there is no proof of this ; and it is not even alleged that there was ill-treatment before the magistrate ; the allegation that the box was never opened is proved to be false ; the witnesses say it was opened, and the quantity of indigo in it ascertained to be three maunds, and two and a half seers. As this robbery has been effected by breaking through a brick wall, and by a large number of persons in concert, I do not think the sentence of seven (7) years' imprisonment, with labor and irons, excessive : it is hereby confirmed.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND TARINEECHURN MOZOOMDAR.

versus

NUDDEA.

KANAI KOTAL (No. 1) AND MADHUB KHUL (No. 2).

1853.

March 28.

Case of KANAI KOTAL and another.

The pleas of the prisoners not rebutting the evidence for the prosecution, their appeal was rejected.

CRIME CHARGED.—Highway-robbery and forcibly taking from the prosecutor property valued at rupees 8-2-0.

CRIME ESTABLISHED.—Highway-robbery and forcibly taking from the prosecutor, Tarineechurn Mozoomdar, property valued at rupees 8-2-0.

Committing Officer, Mr. G. Hewett, deputy magistrate of Cutwa, Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 5th January 1853.

Remarks by the sessions judge.—This case has been clearly proved by the evidence of four separate witnesses, who saw what occurred from different situations. The prosecutor's story is, that he had been bathing in the river, and was going along the road, when the two prisoners, who were strangers to him, accosted him, and asked him some questions, such as "where he lived, &c.," and finding him off his guard attacked him. Kanai Kotal (No. 1) struck him with a stick he pulled out of a hedge close by, two other men joined the prisoners, and all were pulling him towards some jungle, when he called out for help. The four witnesses ran up from different directions to his aid ; and the prisoners and the other two men, seeing them, ran off, taking a body-sheet, which had rupees 7-6-0 in cash, tied up in the corner, from the prosecutor. The two prisoners ran in one direction, and were chased by the witnesses and captured. The other two with the property went in another direction and escaped. The witnesses corroborate the above statement, and swear to having seen the prosecutor's clothes torn from the maltreatment he was subjected to. The prisoners plead "*not guilty*," and say they were inebriated and did not know what had occurred. They called some witnesses for their defence, but declined examining them.

Sentence passed by the lower court.—Each, seven (7) years' imprisonment, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.) —In their appeal the prisoners do not urge the plea of inebriation : they say only that the statement of the prosecutor and the witnesses cannot be true, as it is not proved that they were armed. The

evidence is straight-forward from first to last, and sufficiently establishes the fact of the assault, and the capture of the prisoners, by those persons who came up in time to save the prosecutor from worse treatment. I see no reason to interfere with the sentence passed by the sessions judge.

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Case of KANAI KOTAL and another.

PRESENT:

J. R. COLVIN, ESQ., *Judge*.

GOVERNMENT

versus

MUSST. PARBUTTEA.

SARUN.

1853.

March 28.

Case of MUSST. PARBUTTEA.

Prisoner convicted of exposure of her infant with intent to cause its death, and sentenced to imprisonment for seven years, with labor suited to her sex.

CRIME CHARGED.—Exposing her new-born male child with a view to cause its death.

Committing Officer, Mr. J. F. Lynch, deputy magistrate of Sewan, Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 18th February 1853.

Remarks by the sessions judge.—I refer this case, because, as the prisoner is convicted of having exposed her child with intent to cause its death, it appears to me that I am not competent to dispose of it myself.

The facts of the case are shortly as follows:—On the night of the 30th October 1852, the witness Boodhea, who had gone out of her house to ease herself, heard a child crying in a *ruhur khet*, and thinking that some wild animal might be taking it away, she called to the chowkeedar and gorait to go with her and look, and when they had arrived at the place, they found a new-born child (navel-string still uncut) lying there, which was at once made over to the woman to take care of. Information was subsequently given to the police, and search being instituted to find out the mother, several of the women of the village were collected together, when the prisoner of her own free-will confessed that the child was her's, and that she had deserted it as soon as born, in the field where it was found.

To the deputy magistrate she repeated this confession, adding that the father of the child (Muncar Singh, a relative of her own,) had told her to leave it in the field, and that he would take and throw it into the river. This statement she again repeats on her trial here; and there is therefore no doubt but what her intention was to destroy it, though there is nothing to show (beyond the prisoner's statement) either that Muncar was the father, or that he had consented to aid in its destruction.

The child was found alive and lived for above a month, and though it has since died, there is no reason to believe that its death

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Case of Musst. Parbuttea

was caused by the exposure; nevertheless as, from the prisoner's own confession, and the whole facts of the case, there can be no doubt but what she intended to cause its death, and the law officer also convicts her of this crime (holding her liable by *tazeer*), it becomes my duty to forward the proceedings for the orders of your court; and in doing so I beg to recommend (as in the case of Musst. Omolah, decided on the 29th May 1851,) that the prisoner be sentenced to imprisonment, with labor suited to her sex, for the term of seven (7) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The crime of exposing her infant, with intent to cause its death, is clearly proved against the prisoner, Musst. Parbuttea, by her own confessions and by the circumstances of the case. The court sentence her, as recommended by the sessions judge, to imprisonment for seven (7) years, with labor suited to her sex.

The sessions judge will explain* why, as he thought the above punishment sufficient, and the *futwa* was one of discretionary punishment by *tazeer*, he did not dispose of the case himself, with reference to the last sentence of Clause 7, Section II., Regulation LIII. of 1803.

* In answer to this inquiry, the judge explained, that he had referred the case because he thought that a sentence of seven years was a more appropriate punishment for the offence than the sentence of imprisonment for life, under the precedent of Musst. Bowul Bewah, page 220, vol. II., Nizamut Adawlut Reports. In reply the Court observed, that this explanation was not sufficient, as it was in the judge's power to pass a sentence of seven years' imprisonment himself in the case.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

AZEEMOODDEEN.

BACKERGUNGE.

1853.

March 30.

Case of AZEEMOODDEEN.

The prisoner charged with an offence committed in 1848, denied his identity with the person bearing his name then accused, but his plea not being established, and it being clearly proved by the eye-witnesses to the affray at the former and recent trial, that he was the individual who was present on that occasion, the conviction and sentence passed on him were affirmed.

CRIME CHARGED.—Affray attended with the culpable homicide of Eesuf, and the wounding of Mahomed Ullef, Nanoo Sirdar, Charoo Meera, Auruzooddeen, Sheikh Muddun and Eeja Sirdar.

CRIME ESTABLISHED.—Affray attended with culpable homicide.

Committing Officer, Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, officiating sessions judge of Backergunge, on the 19th January 1853.

Remarks by the officiating sessions judge.—The affray with which this prisoner is charged happened in December 1847. The case was tried in July 1848, and the prisoners then committed were sentenced to different degrees of punishment by the sessions judge.

On appeal to the Nizamut Adawlut only one prisoner, Kishen Chunder, was declared innocent, and the sentence of the zillah court in respect to the rest was confirmed; *vide* the proceedings of the Nizamut Adawlut under date the 21st December 1848.

The prisoner now made over was named from the first as taking part in the affray, and he has been identified by the witnesses as the party they then named. He is brother to the chief prisoner in the original commitment; and there cannot exist any reasonable doubt that he is the very person indicated from the beginning.

His defence is, that he is not the Azeem who was engaged in the affray; and he cited witnesses to prove that the Azeem who was charged at first, was another person, lately deceased.

His witnesses, however, have given their evidence in such a manner and with such contradictions, with respect to the family, &c., of the alleged deceased, as convinces me that they speak of a fictitious character, and in accordance, therefore, with the majority of the jury, who found him "*guilty,*" I convicted him of the affray, and sentenced him to five (5) years' imprisonment, with labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner was named in a former trial, disposed of in 1848, as one of several prisoners in a case of affray with homicide. He was not apprehended till November last. He pleads "*not guilty.*"

On reference to the original record, I find that he was named by several eye-witnesses besides those now examined, as being on the part of Dhunye Lushkur, whose nephew he is. Since his apprehension he was confronted with the same witnesses, who not only recog-

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nized him, but gave details which leave no doubt of his being *the* Azeemoddeen to whom they alluded in their first depositions.

The prisoner in his defence endeavours to establish an *alibi*, and to prove that the Azeem who was concerned in the affray is dead; when first seized by the police, he answered that he was formerly a resident of Garkhan, *but now of Natimshah*, at the house of Golab Shah, where he was seized. He added that he had been absent since the occurrence of the affray at Calcutta and elsewhere, and having learned to read and write he had been in service.

Before the magistrate he denied the charge, accused Kurreem Chowkeedar and Zullul as his enemies who had got up the case against him, having heard of the death of Azeem of Natimshah, and had induced the witnesses to recognize him. He pleaded that he was a resident of Garkhan, *and never lived at Natimshah*, as would be proved by residents of Garkhan;* his witnesses have deposed to that effect. His sessions defence is to the same purport, but *other* witnesses were examined in that court on his application.

Heroo, the first witness, deposed that *the* Azeem of this case died about one year after its occurrence, and Ooturooddeen, another, swore he had occasionally seen the prisoner at the house of Dhunye Lushkur, his relative, at Natimshah, also at the house of Aubic there. The witness gives a very long deposition, but that which is essential to the merits of this case is as above stated.

Lushkur, the third witness, deposed, that Azeem, the prisoner's, house is at Garkhan; that he married the daughter of Azeem of Natimshah, and was in the habit of going there; that there was *yet another Azeem*, resident of Natimshah, who died a twelvemonth after the affray.

The attempt to prove that the prisoner is not the Azeem of the affray by these witnesses is altogether abortive; the discrepancies in their evidence are manifest. The prisoner's signature to his answer in the Mofussil, (for it must be remembered he learned to write during his absence at Calcutta and elsewhere,) corresponds with his signature to his defence before the lower courts, and with that in his appeal to this. He here pleads that he has been apprehended wrongly, as the Azeem of the affray, a resident of Natimshah, now deceased, and urges that he is at enmity with Kurreemooddeen Chowkeedar, in proof whereof he alludes to twelve or thirteen records of the magistrate's and other offices.

The evidence of the prisoner's witnesses is at variance with his own defence, and their depositions are equally inconsistent with each other. Such evidence cannot avail against the positive and clear evidence of the witnesses to the prisoner's recognition, as *the* Azeemooddeen who was present in the affray with homicide, with which he is charged. The story of his journies to Calcutta and elsewhere, is

* Kulleem Peada, Sufder Moonshee, Nowkishee Toogee.

quite opposed to his statements of his residence at Garkhan, and his appearance in the courts and before the authorities in the Mofussil.

The sessions judge and the jury find the prisoner "*guilty*," and I see no reason to interfere with the sentence which has been passed upon him.

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Case of AZEEMOOD-DEEN.

PRESENT :

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT

versus

GOOLCHAND PULLEE (No. 1) AND RAMDOOLLUB PULLEE (No. 2, APPELLANT).

DINAGEPORE.

1853.

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Case of RAMDOOLLUB PULLEE, (appellant) and another.

The plea of *alibi* of the prisoner, appellant, having failed, his appeal was rejected.

CRIME CHARGED.—No. 1, wilful murder of Debbo Rundee, and No. 2, accomplice in the above crime.

CRIME ESTABLISHED.—No. 1, culpable homicide, and No. 2, accomplice in the above crime.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 16th December 1852.

Remarks by the sessions judge.—The prisoner Goolchand is the adopted son of the prisoner Ramdoollub, and lived in his house. Goolchand's wife frequently ran away to her father's house, from whence she was brought back by Goolchand on the 2nd of November. On the following morning the neighbours found him beating her with a small stick, and from the effects of this she died next day. The civil surgeon stated, that she had been beaten severely about the head and face, and that death had been caused by a slight fracture of the skull. The prisoner Ramdoollub ordered the other prisoner to beat her, as she had brought shame on them, and failed in his attempt to establish an *alibi*. The *futwa* of the law officer convicted the prisoners ; and I concurred.

Sentence passed by the lower court.—No. 1, five (5) years' imprisonment, with labor, and No. 2, three (3) years' imprisonment, without irons, and a fine of rupees fifty (50), or labor.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)—The medical officer deposes to a fracture of the skull as the cause of death. The eye-witnesses state the prisoner No. 1, who has not appealed, was beating his wife, the deceased, about the body with a small piece of a bamboo, described on the record to be about two feet long, and weighing six *tolas*. Deceased was in perfect health up to the time of the assault, and is alleged by the prisoners to have died of cholera, but this is not proved by the witnesses. No. 2, who has appealed, endeavours to establish an *alibi*, but fails. The deceased had recently been married to the prisoner No. 1, and

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Case of Ramdoollub Pullee, (appellant) and another.

had more than once run off to her father's house; she was brought back the day before the assault which caused her death. No one saw her under the attack of cholera, and there is the strongest reason to believe that she died from the effects of the ill-treatment she received. I see no reason to interfere with the sessions judge's order.

Present:

A. J. M. MILLLS, Esq., *Officiating Judge.*

BIKILAH BORAH on part of GOVERNMENT

versus

DHOOM LALONG.

Assam.

1853.

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Case of Dhoom Lalong.

The prisoner, who killed his wife, was under the palliating circumstances of the case, sentenced to transportation for life.

Crime Charged.—Wilful murder of Musst. Magonee.

Committing Officer, Lieutenant H. S. Bivar, junior assistant with powers of principal assistant to commissioner, Luckimpore, Assam.

Tried before Captain H. Vetch, deputy commissioner of Assam, during the first sessions of 1853.

Remarks by the deputy commissioner.—The prisoner Dhoom Lalong, inhabitant of Sudya, is stated to be forty years old, while the deceased, Musst. Magonee, with whose murder he is charged, was his wife, and also stated to be of like age. Bikilah Borah, the person put forward on the part of Government as prosecutor, has no further interest in the case than as a head man of the village where the crime was perpetrated, and having been the first to give information to the police.

The history of the case is as follows:—Early on the morning of the 3rd of January 1853, the children of the prisoner Dhoom Lalong, by the deceased, alarmed the village by their cries that their father had killed their mother and fled. On this several persons went to the prisoner's house, and seeing the deceased lying dead inside, gave information at the Saikwah thanna, and on the arrival of the darogah, the dead body was found lying near the fire place. The upper parts as well as a cloth over the neck were covered with blood; there was also blood on the floor, and a large wound on the neck, which divided the artery, and another on the head over the ear, which had penetrated to the brain, which protruded through the wound, while there was a smaller wound higher up on the head. Alongside of the sleeping place was found the scabbard of a *dâo.* On the 8th of January the prisoner gave himself up to Singraee Borah, head of the village, and the *dâo* was also pointed out, and with prisoner sent to the thanna.

The prisoner at the thanna and before the magistrate, and again before the jury, confessed to having killed the deceased with a *dâo,* but unintentionally, supposing that he was striking her with a stick.

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Seer Singh Rye Borah—Deposes to the murder having been reported to him by Bikilah Borah, who said the prisoner, Dhoom Lalong, had killed his wife and fled; that he sent him to the thanna to give information, and on deponent going to Dhoom Lalong's house, he found the deceased's daughters, Aboree and Seenhie, sitting outside weeping, and the corpse of the deceased inside covered with blood; was informed by them that the prisoner had fled the same afternoon. When the darogah came, he ordered deponent to search for Dhoom Lalong, which he did, but did not find him that day; four days after the murder, when Ungsa and he were sitting in his house, word was brought that Dhoom Lalong was forthcoming; they went out, when the prisoner threw himself at their feet, and said it was his fate to commit the deed, and desired to be taken to the thanna. Ungsa also produced the *dâo*, and said he had it from the prisoner; but deponent did not see it given. Thereupon deponent took the prisoner and the *dâo* to the thanna.

The prisoner has belonged to deponent's *khel* or tribe since a child, and deponent knew of nothing against him. The deceased, his wife, is about forty years of age, has had six children by him, of whom four are dead, and two alive. There have been quarrels between the prisoner and deceased from time to time, and they have lived together to deponent's knowledge for the last twenty years. Deponent had heard from prisoner that the deceased had intrigues with Pate Singh Rye, Motee and Mungjung Kamptee, but has no personal knowledge of this. When deponent saw the prisoner, there was nothing to indicate his being insane.

Witness Nugsa—States to the same effect as the foregoing, as far as respects the apprehension of the prisoner, and that when prisoner was questioned about the *dâo*, he told where he had thrown it down, when deponent went and fetched it; afterwards took prisoner and it to the thanna.

Two witnesses, Ohohram and Joyram,—Depose to the darogah having called them to see the corpse, when they observed a wound on the left side of the throat, and another on the head, but do not now recollect the length or width of the wounds.

Rajub Allee, Native Doctor—Deposes that, on the 8th January, a corpse was brought into the Deebrooghur hospital, by the burkundauz of Saikwah thanna, and other persons, on which day Dr. Camplin and he examined it. What was the name of the deceased he does not recollect, but on the body were found two wounds; that on the head was caused by two blows, and these had cut through the bone into the brain—the wound was five inches long: the other was in the neck, which penetrated to the spine, also cut the bone of the neck and the artery. The corpse was otherwise in a healthy state and immediately death was caused by these wounds. The wounds, deponent is of opinion, were inflicted by a sharp and heavy instrument.

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Khehetta—Deposes to the delivering the corpse at the Deebroo-ghur hospital.

Beatmelah—Deposes to the voluntary confession made by the prisoner at the thanna.

Kan Borah—Ditto.

Loorookaie—Deposes to the confession made before the magistrate.

Horooram Tecklah—Ditto.

Dyaram Tecklah—Ditto.

Confession of the prisoner.—Before the magistrate the prisoner confessed, that mistaking the *dâo* produced in court for a stick, he struck the deceased with it and killed her ; that he had got her from the Kampti village twenty years before, and has had six children by her. Of these two survive ; that for the last four years, he and deceased have had quarrels ; she had given him much trouble about his food, and when he remonstrated with her, she gave him abuse ; that Mungjung, Kamptee, Pate Singh Rye and Motee Bur, were her lovers, and he had found the last-named and her sleeping together, and forbid her doing so ; she said, if prevented, she would go to him ; she also kicked and beat him (prisoner) and gave him medicine which made him foolish and forgetful, and it was when in this state, after the second cock-crow, or about 4 A. M., (*i. e.*, before day-break) she left the bed on which she was sleeping by his side, and went out ; she then came back and went to sleep, but after a little she again got up and went out ; and seeing this, he made an opening in the *tattee* and looked through, and saw her enter the jungle which is near his house, from whence, after remaining about half an hour, she returned and sat down by the fire place ; and on his asking her where she had been, she gave him abuse and said she had been to get a husband ; he, being provoked by her abuse and unable to restrain his rage, took up the *dâo* now present, and supposing it to be a stick struck the deceased with it, but how many blows he cannot tell, for he was not in his reason at the time, but when he got outside, he found what was in his hand was not a stick, but the *dâo,* and being overcome with fear, went to the banks of the Goosdooreah river, and remained there four days, when he came to his senses, and with the intention to return to his house arrived at Seer Singh Rye's, when he told him he had killed his wife, and to take him to the thanna ; this was done, and the darogah has forwarded him to you. States that when the blow was struck, there was no light, and the night was dark. The *dâo* was not taken from the scabbard at the time when the crime was committed ; it was before unsheathed : he took the *dâo* with him, and before he had returned the scabbard had been taken to the thanna ; that there was but little light at the time of the deed.

The prisoner in his confession at the thanna further says—The deceased returned the second time, and was lighting the fire when

he questioned her; also that, during the year he was in jail for a political offence, she lived with a burkundauz, but on his being released, she returned to him; he adds that Mungjung Kamptee, one of her alleged paramours, is dead. 1853. March 30. Case of DHOOM LALONG.

Ainah—Deposes to having accompanied the prisoner out fishing the day before the deed, at which time he was quite well, and the same night his daughter, Aboree, called out—"Brother, the prisoner, my father, has killed his wife, and fled to the jungle." On hearing this, he, Nuggur, and Gunluggah, went and saw the deceased Mahonee lying dead alongside of the fire-place in her house, but the prisoner was absent. The same afternoon the darogah came, when the wounds, as already described in the *sooruthal*, were seen. The scabbard produced was found alongside of the prisoner's bedding; he recognized it because he is a neighbour and lives within twenty-five paces of the prisoner's house.

The red *tharna* or box was found in a basket in the house; cannot tell whence it was obtained, but heard from deceased and others that she had got it from Mungjung Kamptee. The *dâo* he has seen with the prisoner for the last year, and knows it to be his. The cloth dyed with blood was on the deceased's neck: there was blood over her breast and on the ground: he, Gunluggah, Nuggur and Hagorah, took the body to the thanna, and thence the darogah sent it to Deebrooghur; knows nothing of the quarrels between the prisoner and deceased; he lives within twenty yards of the prisoner's house.

Gunluggah—Deposes to the same effect as the above, and further, has known the prisoner from childhood; also the deceased, since prisoner brought her home; they have had six children, and she was about forty years of age; the prisoner was quite well, and sane and is respectable; and he has frequented his house, but never saw any quarrelling, but he has heard from prisoner that when he went out for firewood or to fish, that she intrigued with Mungjung Kamptee, Motee Gohain and Pate Singh Rye, and that this distressed him; has seen Mungjung and Pate Singh Rye i prisoner's house, in conversation with deceased, but nothing further; but prisoner has been for three years distressed about this; saw no stick in the house.

Nuggur Singh Rye—Deposes to the same effect as the above; and further that he lives within about thirty-two cubits from prisoner's house, and on the evening of the murder was at the prisoner's house for about a *dund* (about twenty-five minutes) where he went to eat *pawn*, and which time the deceased, prisoner and Aboree were there, when he saw nothing different in respect to the prisoner; after this he went to sleep, when he was awoke next morning by Aboree as stated by foregoing witnesses.

For the last four years there has been disagreements between the prisoner and deceased. Prisoner said that she intrigues with Pate

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Singh Rye, Mungjung Kamptee, and Motee, cow-herd; sometimes prisoner struck and pushed the deceased, and she gave him abusive language; does not know of himself of deceased's being guilty of infidelity.

Musst. Aboree, aged eleven or twelve years,—Deposes that she, her sister Seenai, deceased, and prisoner were sleeping together on the same bedding; on the morning not finding either prisoner or the deceased on the bed, she got down and found her mother, the deceased, lying near the fire-place. There was blood on the ground. On seeing this, she called to her mother to get up; and on taking up her hand to lift her, found she was dead. She found blood flow from the right side of her neck, and also that blood had come from a wound above her ear; saw the blood-dyed cloth on her neck, but at that time did not see the prisoner Dhoom Lalong, and being afraid, she went out weeping and cried out to Gunluggah that her father had killed her mother, and fled; they came and looked in at the door, and went away; in the afternoon the darogah came, and took away the scabbard of the *dâo* which was lying alongside of the bedding. The red *tharna* was found in the *pitarah;* the *dâo* in court was not then in the house; heard it was got when prisoner was caught. The prisoner was in the habit of sleeping with the *dâo* beside his bed, Mungjung Kamptee gave the red *tharna* to the deceased. In consequence of Motee, Goroo Keah, and Mungjung Kamptee, coming and laughing and joking with her mother, the prisoner would not look at her, and they had quarrels from time to time; her mother struck and kicked prisoner. For the last three years, the prisoner has been subjected to fits, and became senseless for the time it would take to eat a *pawn;* cannot tell who killed her mother, as she was asleep at the time. The deceased was in the habit of gadding about the village; when prisoner asked her about her absence, she gave him abuse; sometimes at night she was not in her bed, at other times she was. When she gave the alarm she said it was the prisoner who had killed her mother, from not seeing him in the house.

Defence.—The defence is little else than a recapitulation of the confession already given at length.

The jury returned a verdict of culpable homicide against the prisoner. They consider him guilty of having unintentionally killed the deceased by wounding her with a *dâo*, under the impression that he was striking her with a *lattee,* their reason being that no one saw the crime committed, and that it is so asserted by the prisoner in his confession. The joint magistrate did not concur in their opinion, but considers the prisoner guilty of the crime with which he stands charged; and his English letter and *roobukaree* record his reason for this opinion; and taking into consideration the provocation prisoner received from the deceased, and the circumstance that the chief evidence against him consists in his own confession, recom-

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mends that he be sentenced to imprisonment with hard labor in irons for life.

Opinions of the Deputy Commissioner.—I do not consider the reasons assigned by the jury for their verdict of culpable homicide instead of murder valid; for I believe that no one even in the dark could mistake the *dâo* produced in court for a stick; that it was so very dark is not on proof; and as the position in which the corpse was found clearly indicates that the deceased was sitting by the fire, it is reasonable to infer that it gave out some light. Further, to inflict such wounds as those decribed required dexterity in handling the instrument, if not light, to guide the blows; and if the prisoner's statements be admitted to the point, that the deceased did go out, it is highly probable that he did, as he said, watch her movements, and was naturally prepared for her return, and as it is fully admitted by the prisoner, as it is clearly corroborated by the evidence, that he killed his late wife, the deceased Musst. Magonee, and as I cannot agree with the verdict of the jury, but fully concur in the opinion of the joint magistrate, I find the prisoner Dhoom Lalong guilty of the charge of wilful murder, committed, I am willing to believe, while labouring under great excitement, and stung by the belief that his wife had just returned from a fresh act of infidelity, coupled with previous wrongs, and which from the evidence adduced he had strong cause; under these circumstances I would, as proposed by the joint magistrate, recommend that the prisoner, Dhoom Lalong, be imprisoned for life, in transportation beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—The prisoner pleaded "*guilty*" at the trial of killing his wife. I concur in the view taken of the case by the deputy commissioner, and convicting the prisoner of the charge of wilful murder, sentence him, under the palliating circumstances stated by the deputy commissioner, to imprisonment for life, in transportation.

PRESENT :

J. R. COLVIN, ESQ., *Judge.*

BENUJEE PATUCK JEMADAR, ON THE PART OF MR. VARDON AND GOVERNMENT

versus

GUNGADHUR SIRCAR (No. 2) AND BUNMALEE SIRCAR (No. 3).

MOORSHEDABAD.

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Case of GUNGADHUR SIRCAR and another.

Under Section XI., Act XIII. of 1850, proceedings, *upon the same charge,* will not be legal against a party accused of embezzlement, with reference to a gross deficiency in his accounts, if the transactions, to which the charge relates, extend over a period, exceeding six calendar months.

A factor or agent cannot be convicted of embezzlement, under the Act, upon proof of disbursements disallowed by his employer, unless there be evidence that the monies entrusted to him were not disbursed by him for his employer's purposes, but remained unaccounted for in his possession, so as to afford proof, according to the Act, of fraudulent misappropriation.

CRIME CHARGED.—1st count, having embezzled rupees 1,957-13-5, belonging to the master of the prosecutor; and 2nd count, having stolen the above money.

CRIME ESTABLISHED.—No. 2, embezzlement, and No. 3, accessary to the same.

Committing Officer, Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 5th January 1853.

Remarks by the sessions judge.—From the evidence in this case it is clear that the principal prisoner, Gungadhur Sircar, was in the service of Mr. Vardon, receiving rupees 10 wages per mensem, and that he was entrusted at different times with sums of money on account of his master, with authority under certain conditions of employing the same for the special purpose of procuring raw silk, and was allowed a commission of 1½ annas upon every seer he produced. An agreement was drawn up, which he signed, and to which the signature of his brother, the other prisoner, Bunmalee Sircar, was also attached, whereby he bound himself to render an account to his master of the money entrusted to him whenever he might be called upon for it, and was jointly with his brother liable for any deficiency. It is proved from the accounts entered by the prosecutor on the part of his master that when he was called upon to render an account, there was a balance due of rupees 1,957-13-5, which he promised to pay in a week. The promise was not fulfilled; and he, together with the other prisoner, has been charged under Act XIII. of 1850 of a breach of trust, and on conviction committed to the sessions court.

The prisoners deny the charge; but the defence which the prisoner Gungadhur Sircar has put in is evidence against them. He admits that he received money to the extent of rupees 1,500, and of this sum he could render no good account; besides which,

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he confesses that he appropriated to himself rupees 6½. When he was called upon for an account, either the money, or an equivalent in goods, for which that money was to be employed, with fair deductions for expenses, should have been at once delivered to his master. He was guilty, under Act XIII. of 1850, in virtue of his employment, of embezzlement or a felonious breach of trust.

The principal sudder ameen and provincial pundit, who sat with me on the trial as assessors, acquitted the prisoners of the charge, considering the case neither proved nor cognizable by the sessions court.

I cannot assent to this opinion. Act XIII. of 1850 appears to me to be strictly applicable to a case of this nature. It does not follow that because an agreement partaking of a civil contract has been entered into by the parties, upon which a suit might be instituted in the civil court, that therefore they are exempted from the liability of a breach of trust under this Act in the criminal court. Whenever there is a trust, there must be some kind of agreement. Silk merchants and indigo planters deal largely in this and the neighbouring districts in trusts of the nature under view; and Act XIII. of 1850 appears to be a special provision for them against the breach of such trusts.

The prisoner Bunmalee Sircar was a gomashta, and though it is not in evidence that he was in the receipt of wages, he signed the agreement upon which the money was given on trust, and acted as joint agent with his brother. He is, therefore, guilty of the charge, but not to the same extent. Gungadhur was evidently the principal. I sentenced him to five (5) years' imprisonment, with labor, and Bunmalee Doss to two (2) years' imprisonment, without labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—There is one irregularity of form, and another, material to the validity of the commitment, in this case.

The charge ought to have been laid distinctly under Act XIII. 1850, upon which the conviction is based, and it ought to have included a general description of the trust, its purpose, &c., as directed by the concluding part of Section XIII. of the Act. This defect is, however, such as could have been rectified by an amendment of the record.

The material defect is, that the charge of embezzlement rests on a balance of account, not paid in by the prisoners, the transactions in the account extending from February 1851 to April 30th 1852, or for from fourteen to fifteen months, whereas, though Section XI. of the Act lays down that "proof of a gross deficiency in the accounts of any such trustee or public servant shall be evidence of the offence charged, unless such deficiency be otherwise explained," it also limits the proceedings against the offender *on the same charge* to the case of "any number of distinct acts of embezzlement or fraudulent application, *committed by him within six calendar*

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months, from *the first to the last of such acts.*" This defect is fatal to the conviction.

The conviction also appears untenable on another ground. The charge must have been intended to be against the two prisoners as factors or agents, under Section VI. of the Act. The evidence is in an account of receipts and disbursements in their capacity as such agents, said to have been adjusted and given in by them to the prosecutor at his factory. But they had been acting under a very strict and special agreement to the effect that they would only charge at such rates for silk, or other articles bought, as the prosecutor might allow. Now, it is, of course, very possible that there might be a balance upon an account of expenditure, adjusted on this principle, and yet that there may have been no fraudulent appropriation of the money. This is the view of the case, which has been taken by the native assessors. Had the original accounts, as kept from day to day by the prisoners themselves, been produced, and had it been quite clear that, even at their own rates of charge for purchases, a gross deficiency remained upon the amount of advances which had been received by them, then there would have been such presumptive evidence, as is warranted by Section XI. of the Act, of fraudulent embezzlement or appropriation.

For the above reasons, the prisoners must be acquitted and released.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

GOOKOORA NUSHO.

DINAGEPORE.

1853.

April 1.

Case of GOOKOORA NUSHO.

The prisoner was sentenced capitally for the murder of his wife.

CRIME CHARGED. Wilful murder of Alleepun Rundy, his wife.

Committing Officer, Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 12th February 1853.

Remarks by the sessions judge.—'The prisoner, charged with the wilful murder of Alleepun Rundy, his wife, on the 8th of January 1853, corresponding with the 26th Pous 1259 B. S., pleads not guilty, and that his mofussil confession was dictated by the police, who promised to get him released, and also frightened him into confessing before the magistrate. The prisoner married Alleepun, his second wife, (by *nikah.*) some seven months before the murder, and his former wife (by *beah);* remained in her parents' house until a few days before the murder. Alleepun went, eight days before the murder, to the house of her mother, Tookee, a mile off, without the consent of the prisoner. On the night of the murder, the prisoner arrived there, ate, smoked about midnight, and retired to rest. Next morning, the mother of Alleepun, not finding her or the prisoner, went to the house of the prisoner, who denied having been to her house or having seen her daughter. The body of Alleepun was discovered the next day in a jungle, half a mile from the houses of Tookee and the prisoner, and considerably out of the direct road between them. Kassim, No. 16, and Nuffra, No. 17, observed a head and bones as they were passing, and Tookee and her companions on their arrival recognised them by the clothes and ornaments. The prisoner when apprehended in his own house denied the murder, but when taken to Tookee's house he confessed, returned to his own and produced the *dao* (hatchet) with which he had committed the murder, from a *muchan* in his house. It is clear from the evidence of Tookee, No. 7, Sootub, No. 8, and Khanayjauth No. 3, that the prisoner was with the deceased on the night of the murder; and from that of Jaffer Ally, No. 13, and Emamdee, No. 15, that the prisoner produced from his house a *dao*, which, he said, he had committed the murder with and had sub-

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sequently washed. The civil assistant surgeon states, that "there were three distinct marks of cuts from some heavy cutting instrument upon the skull; one of them had entirely "removed a portion of the skull and exposed the brain, death "must have taken place very shortly after these injuries, which "were very likely to have been caused by the instrument now "produced in court." All this tallies in essentials with the prisoner's confessions, which are proved to have been made voluntarily. In the confessions the prisoner states that the deceased after quarrelling with him, and each threatening the other, had gone to her mother's house in contempt of his orders; that he went there with a *dao* (hatchet) which he for a time concealed; that he made her leave her mother's house at night with him; that he told her he had done so for the purpose of murdering her; that he took her into a jungle, ordered her to sit down, struck her, when she trembled and fell, and that he then killed her with the *dao* by two blows on the back of the head, and afterwards washed the blood off the *dao*, which he took home with him. The futwa of the law officer convicts the prisoner and declares him liable to *kissas*, in which I concur, and recommend that he be sentenced to suffer death.'

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and A. J. M. Mills.)—MR. JACKSON.—'The prisoner Gookoora, aged 25 years, is accused of the murder of his wife, Aleepun, aged about 13 years; it seems the prisoner has a second wife older than Aleepun. Aleepun was in the habit of going to her mother's house about a mile from her husband's; she went there on this occasion. Some days after the prisoner went there and stayed the night; to this the mother deposes; the next day they were gone in the morning; the mother went the same day to prisoner's house to enquire for her daughter, when the prisoner denied having been with her, or brought her away the night before; after two days the body was found and identified in the jungle about equally distant from both houses; it bore the marks of three cuts with a sharp instrument on the head, one of which laid open the brains; the prisoner in the mofussil confessed having murdered deceased with a *dao*, the same night that he took her from her mother; before the magistrate he repeated his confession. There is nothing to set against this evidence; the only circumstance mentioned in mitigation is, that some verbal altercation had taken place between prisoner and his wife, the deceased. I convict the prisoner, Gookoora, of the murder of his wife, and would sentence him to suffer death.'

MR. MILLS.—'I concur in the conviction of the prisoner, and can trace no circumstances of extenuation in this cruel

and deliberate murder. The presumption is strong that the prisoner went to the house of his mother-in-law, where his wife had gone without his consent, taking with him a hatchet, and bent on doing his wife harm. I concur in the proposed sentence of death.'

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April 1.

Case of GOOKOORA NUSHO.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GYANEE MUNDER AND GOVERNMENT
versus
HURDYAL.

BHAUGULPORE.

1853.

April 1.

Case of HURDY

Conviction and sentence affirmed with reference to the prisoner's notorious bad character.

CRIME CHARGED.—1st count, burglary and theft of property valued at 9 annas; 2nd count, being of notorious bad character.

CRIME ESTABLISHED.—Burglary and theft of property, valued at 9 annas.

Committing Officer,—Mr. G. G. Balfour, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 26th January 1853.

Remarks by the sessions judge.—'Prisoner pleads not guilty.

'Prisoner was found at midnight on the spot in the village of Nukkeenuggur, where he had made a *seind* and abstracted a *lotah* and a *katorah* from the house of prosecutor, who was awoke by the noise of these knocking against each other, as they were drawn out of the *seind*; he went round to the back of his house and there saw three men; two ran away, the third he caught with his own hands; this was Hurdyal, the prisoner, whom he identifies as the thief seized by him, and as a known bad character, already several times punished. The evidence proves the facts stated by prosecutor; three of the four principal witnesses are neighbours, the fourth is the chowkeedar of the place; they all came to the spot on hearing the outcry; all depose to prisoner being the person seized on the spot on the night of the burglary, and identify the property as that of prosecutor. They also depose to the notorious bad character of the prisoner.

'Prisoner, a *sonar* by profession, denies the burglary; says he was coming home from his work about seven P. M., near the house of prosecutor, with whom he was at enmity regarding some transaction of making up ornaments, when prosecutor on this account seeing him going by, seized and beat him and accused him of the theft.

'The jury return a verdict of guilty of both counts, of the indictment in which finding I concur.

1853.

April 1.

Case of HURDYAL.

'The prisoner is a notorious offender, on which account the case was committed to the sessions; he had been twice imprisoned, each time for one year with labor and irons, under orders of the magistrate of Monghyr, dated the 18th April 1836 and 26th October 1850, for *budmashee*, and once for three years for burglary, under date the 31st August 1843.

'Under these circumstances, I sentence the prisoner, as a hardened offender, to imprisonment with labor and irons for seven years.'

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—'The prisoner was seized by the prosecutor in the act with property which he threw down on the spot; the fact is proved by the neighbours who came to the prosecutor's assistance on hearing him cry out. I confirm the sentence passed upon the prisoner, with reference to his notorious bad character.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

BRIJOMOHUN DOSS BYRAGEE.

HOOGHLY.

1853.

April 1.

Case of BRIJOMOHUN DOSS, Byraghee.

The prisoners, dacoits by profession, were sentenced to transportation for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer—Mr. S. Wauchope, commissioner for the suppression of dacoitee at Hooghly.

Tried before Mr J. H. Patton, officiating additional sessions judge of Hooghly, on the 19th March 1853.

Remarks by the officiating additional sessions judge.—'This is a commitment under Act XXIV. of 1843, and the prisoner is indicted for having belonged to a gang of dacoits.

'The prisoner pleads guilty to the charge, and makes a detailed comfession of having participated in the commission of 14 dacoities, naming some of the leaders of the gangs with which he was associated.

'The prisoner pleads nothing in his defence, and admits that he made all the confessions, read in Court, before the commissioner for the suppression of dacoitee, and that he did so of his free will and accord.

'I convict the prisoner of having belonged to a gang of dacoits and recommend that he be sentenced to imprisonment with labor in irons in transportation beyond sea for life.'

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M Mills.)—'The prisoner is charged with, and pleads guilty to, belonging to gang of dacoits. He has disclosed the particulars of 14 dacoities in which he has taken part, and the

confessions were read on the trial, and admitted by him to be true. The case is analogous to that of Gopal Dolye, decided on the 23rd of October 1852, in which the majority of the Court held, Mr. Colvin and myself dissenting, that Section I. Act XXIV. of 1843, was applicable to any class of dacoits, and that the confession of a prisoner to his belonging to a gang was sufficient to prove against him the charge. Under this precedent, I convict the prisoner, and sentence him to imprisonment for life in transportation beyond the sea.'

1853.

April 1.
Case of
BRIJOMOHUN DOSS, Byraghee.

PRESENT:

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT

versus

SHEIKH HABOO SIRDAR (No. 10), TINCOWREE SIRDAR BAGDY (No. 11), GOBINDO PAUL SUTGOPE (No. 12), AND ROOPCHAND MOOSULMAN (No. 13).

HOOGHLY.

1853.

April 1.
Case of
SHEIK HABOO SIRDAR and others.
The prisoner was sentenced to imprisonment for life in transportation, for belonging to a gang of dacoits.

CRIME CHARGED.—1st count, dacoitee in the house of Jeetoo Nikari at Domoorda, on the night of the 12th October 1852, and plundering therefrom property to the amount of rupees 514-1, and 2nd count, having belonged to a gang of dacoits.

Committing Officer—Mr. S. Wauchope, commissioner for the suppression of dacoitee at Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 19th March 1853.

Remarks by the officiating additional sessions judge.—'The prisoners are charged in the first count with having committed a dacoitee in the house of Jibun Nikari and plundered therefrom property to the value of upwards of 500 rupees, and in the second count of having belonged to a gang of dacoits.

'The prisoners plead guilty to both counts of the indictment, and declare themselves *lattials* and dacoits by profession. They were arrested on the information of an approver, of the name of Kylass Tanti, who accompanied them and took part in the commission of the dacoitee.

'The party whose house was plundered on the occasion, and a relative of his, who was present at the time and whom the dacoits maltreated, depose to the dacoitee and the plunder consequent thereon.

'Four witnesses verify the two confessions made by the prisoners, before the commissioner for the suppression of dacoitee, and prove them to have been voluntarily given.

1853.

April 1.

Case of SHEIK HABOO SIRDAR and others.

'The prisoners plead nothing in defence, and reiterate their confessions.

'I convict all the prisoners of having committed the dacoitee in question, and having belonged to a gang of dacoits, and recommend that they be sentenced to imprisonment for life with labor in irons in transportation beyond sea.'

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—'The prisoner pleads guilty to both counts of the indictment. The dacoitee was committed on the 13th of October 1852, and no trace of the perpetrators was then discovered. The prisoners who were named in the confession of the approver Kylass Tanti, were apprehended by the commissioner of dacoitee, and confessed before that officer to having committed this dacoitee. The dates of their confessions are as follows: No. 12, on the 22nd of December 1852; No 10, on the 17th of January 1853; Nos. 11 and 13, on the 26th of February 1853.

'It appears that Kylass Tanti was arrested on the 14th of October, and Mr. Wauchope states:—"The first thing he said to me was:—'I did not commit the dacoitee at Damoorda, but I can tell you who did.'" Mr. Wauchope adds, that he and his people had been absent from Hooghly for several days, and that neither he nor they were aware that the dacoitee had been committed." On his return to Hooghly, he ascertained that the dacoitee had been committed on the night of the 13th. Kylass Tanti finding that his associates would implicate him, turned approver and has been tried, convicted and admitted as an approver. The evidence of this person is, under the circumstances above stated, which preclude all idea of suspicion in every way, worthy of confidence, and taken with the confessions of the prisoners as to the manner in which the dacoitee was committed, which tally completely and are corroborated by the deposition of the people of the house plundered, clearly establish the guilt of the prisoners.

'The prisoners acknowledge themselves to be dacoits and to have committed other dacoities, and the crime of belonging to a gang of dacoits is, with reference to the precedent established in Gopal Dolye's case, see my remarks on the trial of Brijomohun Doss, disposed of on this date, also proved against them. I accordingly sentence all the prisoners to imprisonment for life in transportation beyond the seas.

'The proceedings in this case are highly creditable to Mr. Wauchope.'

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

SEETA

versus

MUNDULEE (No. 2), AND ROJHUNNEE (No. 3).

PATNA.

1853.

April 1.

Case of MUNDULEE and another.

On a charge of child stealing, the principal was sentenced to 1 years' imprisonment, and an accessary before the fact to 2 years', concurrence with the recommendation of the sessions judge.

CRIME CHARGED.—1st Count, Nos. 2 and 3, stealing Rumooniza, the infant daughter of the prosecutor, aged three years and 2nd Count, No. 3. Accessary before the fact to the stealing of the said child.

Committing Officer—Captain R. Spencer, officiating cantonment joint magistrate, Dinapore.

Tried before, Mr. R. J. Loughnan, sessions judge of Patna, on the 10th March 1853.

Remarks by the sessions judge.—'The reason of this reference is a difference of opinion between myself and the officiating law officer, respecting the guilt of the prisoner Rojhunnee, against whom there is no proof in my opinion of child-stealing, but only of being accessary before the fact in that crime, whereas the law officer convicts her both of the stealing and of the accessaryship.

'The taking away of the child by Mundulee, without the consent of its parents, is proved by the evidence of the prosecutor, who appears to have learned it from the neighbours on his return home from the fields; of Sookkun, who saw the child following the prisoner, Mundulee; and of Pheka, who saw Mundulee sitting in the rear of the child's dwelling, while it was playing about there. Other witnesses spoke to the excitement caused by the child's disappearance. Mundulee, in her statement before the joint magistrate, who committed the case duly authenticated, admitted that she had taken the child without the consent of its parents to Bansdeeah, where her relations reside, in the district of Sarun across the river Ganges. There it appears from the evidence of the prosecutor, he found it, when he proceeded with the police to search for it; but Mundulee was not found at that time by him. The defence of Mundulee is, that she took the child with no evil intent, but merely because it was wont to be with her, and that she intended to bring it back with her, but being delayed by her uncle's death, she was anticipated by prosecutors coming in search. She called no witnesses, and in the absence of proof of intention to restore the child, the facts of carrying it off to such a distance, and keeping it for many days without informing the parents or the neighbours what had become of it, constitute in my opinion presumptive proof of evil design.

1853. April 1. Case of MUNDULEE and others.

'Her mother, Rojhunnee, in a confession at the thannah, duly authenticated, admitted having counselled the stealing away of the child by her daughter, and this confession mentioning where the child would be found, led to its recovery.

'In her confessionb efore the joint magistrate on the following day, she merely admitted knowledge of her daughter's intention to take the child with her and bring it back in a few days, saying she had forbidden her doing so.

'It is evident, she was at any rate privy to the intention of her daughter to take the child to Bansdeeah; but I see no reason to think her first confession otherwise than voluntary, which proves her guilty of accessaryship before the fact.

'Being of opinion that the prisoners are guilty, as above stated, I recommend that they be sentenced to imprisonment with labor suitable to their sex, Mundulee for four, and Rojhunnee for two years.'

Remarks by the Nizamut Adawlut.—(Present: Mr. A. J. M. Mills.)—'I fully concur in the judge's view of this case. There is no proof that the prisoner Rojhunnee was personally concerned in the theft. I convict her of being an accessary before the fact. The guilt of the prisoner Mundulee is clearly established.

'I sentence the prisoners, as recommended by the session judge, Mundulee to four years' and Rojhunnee to two years' imprisonment, with labor suited to their sex.'

PRESENT:

A. J. M. MILLS, ESQ., *Officiating Judge.*

GOVERNMENT

versus

TORILL.

PATNA. 1853. April 1. Case of TORILL.

The prisoner being convicted of perjury by the Nizamut Adawlut, in concurrence with the sessions judge, the sentence proposed by the latter was passed upon him.

CRIME CHARGED.—Perjury.

Committing Officer—Mr. F. A. Vincent, deputy magistrate of Barh, Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 5th of March 1853.

Remarks by the sessions judge.—'The reason of this reference is a difference of opinion between myself and the acting law officer, who, because the genuineness of the prisoner's depositions in the magistrate's court rested on the sole testimony of one witness, acquits the prisoner. I am of opinion, that in the absence of the writer of the deposition, who it appears was

too ill to attend on the trial to give evidence, the evidence of another mohurrir in the office of the magistrate, who deposes that he was present at the time the prisoner made solemn declaration according to Act V. of 1840, and that deposition is sufficient to prove the said deposition. 1853. April 1. Case of TORILL.

'The prisoner admitted in giving his evidence in the sessions court, that he had made such a deposition; but said, that he had done so under the influence of the ill-treatment, threats and promises of the darogah. In his defence, now he denies having made any such deposition, though he repeats his statement of his being ill-treated by the darogah.

'I think wilful perjury from which the most serious consequences, such as the capital punishment of innocent persons or the escape of murderers, might, or may have resulted, is very clearly established; for the depositions are sufficiently proved and are evidently directly contradictory one to the other. I would convict the prisoner and recommend him to be sentenced to the full penalty the law allows, *viz.*, seven year's imprisonment with labor in irons, and two years additional in lieu of corporal punishment. Altogether to nine year's imprisonment with labor in irons.'

Remarks by the Nizamut Adawlut, (Present: Mr. A. J. M. Mills.)—I concur with the sessions judge, that the evidence of the mohurrir who swears, that he was present when the prisoner's deposition was taken down in writing on oath, and proves the genuineness of the deposition itself, corroborated by the admission of the prisoner in the sessions court, that he had deposed to the effect stated in it, is sufficient to convict the prisoner of the crime charged against him. He has either given false testimony against persons accused of a capital crime or has maliciously retracted true testimony with the view of obtaining the acquittal of the accused. Either offence is of a very grave nature, and I confirm the sentence proposed by the sessions judge.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

NADIR ALEE AND GOVERNMENT
versus
GUNDOWREE AND ROUSHUN.

BHAUGULPORE.

1853.

April 1.

Case of GUNDOWREE and another.

The conviction of the sessions judge was altered from one of assault to one of culpable homicide.

CRIME CHARGED.—Wilful murder of Mussumat Hoolo.

CRIME ESTABLISHED.—Assault.

Committing Officer— Mr. A. Hope, officiating magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 17th January 1853.

Remarks by the sessions judge.—Prisoners plead "not guilty."

The circumstances adduced against prisoners are as follows:—

The deceased a woman about 30 or 40 years of age, was accounted a witch, and Gundowree, prisoner No. 2, having a young son sick accused her of being the cause of the childs illness. On the morning in question, very early, Gundowree and his brother-in-law, Roushun Alee, prisoner No. 3, seized deceased in her own house and dragged her out and beat her with the sticks* produced in court, with their fists, and kicked her, so that she fell down senseless. They then dragged her back to her own door and left her. The prosecutor, her son, Nadir Alee, having gone to the rescue of his mother, was also struck a blow over the eye with a stick. Deceased died on the third day from the beating. Notice was immediately given at the thannah, and an inquest held, from the proceedings of which, it would appear, that there were at the time of deceased's death the marks of several blows on her body, beyond which there is no evidence of any particular cause of death. The body was sent in to the station, but too much decomposed to allow of inspection. The civil surgeon mentions that he saw no marks on the body.

Gundowree, prisoner No. 2. in his defence, states that deceased was a witch, that she was once the cause of he himself falling ill; that on that occasion he complained to his zemindar and got her turned out of the village; that on her returning his child was taken ill; on which he convened a *punchayet* of his people and got deceased and Nadir Alee, prosecutor, excluded from the community, that in revenge, deceased took

* A small bamboo about two feet long, the thickness of a thumb, and a strip of a *tar* tree leaf called *damkola*.

1853. April 1. Case of GUNDOWREE and another.

poison in order that her death might be laid at his door. Before the magistrate he stated differently to the same end; but telling a different story, in which Nadir Alee is made to kill his mother on purpose to implicate Gundowree in the murder.

Roushun Alee, prisoner No. 3, pleads ignorance of the beating and ill-treatment, but says, he heard Gundowree tell Nadir Alee to speak to his mother, about causing the illness of the child.

The witnesses produced by Gundowree in his defence merely state, that they did not see him beat deceased. Roushun Alee brings no witnesses.

The jury acquit of wilful murder; but bring in a verdict of culpable homicide *(Sheba Ahmd.)*

I am of opinion, that neither the murder nor culpable homicide are proved against either of the prisoners. The evidence as to the extent of the beating is very contradictory, and there is little to connect the death of Mussamut Hoolo with the ill-treatment she received. It did not take place till the third day after the beating. Neither is there any evidence of her intermediate state. That deceased was maltreated by both prisoners, is fully proved, and the cause (suspicion of witchcraft) is sufficiently evident. I convict them of the assault, and with reference to its being made on a helpless old woman, sentence them to be imprisoned, without labor or irons, for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Sir Robert Barlow.)—The sessions judge in the earlier part of his report states: "the prisoners beat the deceased, she fell senseless, they then dragged her back to her own door and she died on the third day from the beating." The inquest showed the marks of several blows on the body. At the conclusion of his remarks on the trial, he records his opinion that neither the murder nor culpable homicide is proved. The evidence as to the extent of the beating is contradictory and there is little to connect the death of the deceased with the ill-treatment she received. Upon these grounds, he convicts the prisoners of assault only. This finding is not consistent with the sessions judge's own remarks above quoted, and is opposed to the evidence on the record. The assault on the deceased in the house of the prisoners, her falling at once senseless and her death on the Sunday after the Friday of the occurrence, are clearly proved, as well as the fact of her perfect health previously. No other cause is assigned and there is the strongest presumption that death did ensue on the ill-treatment she underwent.

The prisoners have appealed and their sentence cannot therefore be enhanced; but I would convict them of culpable homicide, dissenting altogether from the finding of the sessions judge, in concurrence with the opinion of the jury.

PRESENT:
SIR R. BARLOW, BART., W. B. JACKSON, ESQ., } *Judges.*

SUMBOO CHYEN AND GOVERNMENT
versus
LUCKHUN CHYEN.

MOORSHEDABAD.

1853.

April 1.

Case of LUCKHUN CHYEN.

The prisoner was sentenced capitally. The court holding that a paroxysm of anger, unless shown to be founded on great provocation was no ground for mitigation of punishment.

CRIME CHARGED.—Wilful murder of Monia Bewa, sister of the prosecutor, Sumboo Chyen.

Committing Officer—Moulvy Abdool Jubbar, law officer exercising powers of a magistrate.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 19 th January 1853.

Remarks by the sessions judge.—The prisoner pleaded "not guilty." The particulars of the case are as follows:—In this case the government was prosecutor, and there was no eye-witness to the murder.

The deceased was the sister-in-law of the prisoner or the widow of his brother. There was a disagreement between them on account of some bullocks belonging to the deceased, which the prisoner wanted her to share with him, and this led to frequent quarrels. On the 19th of Assin last at 3 P. M., the body of the deceased was found with the neck cut, and her left hand entirely separated from the wrist. There were also severe wounds on her right and left shoulders and near the body; the prisoner was seen brandishing a *hanswah;* no one from fear ventured to approach him. Luckea, the wife of the prisoner was lying wounded a little distance off. On some of the witnesses attempting to seize the prisoner, he said he had killed two persons, and would kill any body who dared to approach him. After saying this, he cut his own throat with the *hanswah* he had in his hand, no cause could be assigned to the prisoners wounding his wife. Two of the witnesses supposed that she might have interfered at the time the prisoner killed the deceased. When the prisoner was taken up he could not speak from the effects of the wound he had inflicted on himself, and which was about four or five fingers in length. The witnesses identified the *hanswah.* The witnesses to the inquest on the body of the deceased described the several wounds upon it, and stated that they saw the prisoner's mother give up the *hanswah* which was stained with blood.

Luckea, the prisoner's wife, attributed the quarrel between the prisoner and the deceased, to her (the deceased) being unchaste, and his remonstrating with her about her conduct. She stated that the deceased had wounded the prisoner and herself.

1853. April 1. Case of LUCKHUN CHYEN.

The civil surgeon deposed on oath, that the wounds inflicted on the body of the deceased by a cuting instrument were the cause of death.

The assessors who sat with me on the trial, convicted the prisoner of wilful murder on violent presumption, and I concurred in the verdict.

Although there was no eye-witnesses to the murder and it is not known what was the immediate provocation, there is no doubt of the prisoner having committed it. His conduct immediately after, and the almost fatal wounds he inflicted upon himself, induces a belief that he committed the act under a sudden paroxysm of passion amounting to temporary derangement, and I would on this account recommend that a capital punishment be remitted, and that he be sentenced to imprisonment, with labor and irons, in tranportation beyound sea for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. W. B. Jackson.)—

SIR R. BARLOW.—There can be no doubt that the deceased Monia Bewa was killed by the prisoner Luckhun Chyen.

The instrument with which he committed the deed was seen in his hand covered with blood as he was standing over the body, and threatening every one who approached him. The prisoner's wife was also wounded with the sickle, by whom is not clearly proved.

The evidence establishes that the prisoner and the deceased had, on the day of this occurrence, disputes about the partition of his deceased brother's property with Monia, his widow, and it seems that frequent quarrels had previously taken place between them on the same subject. Before the magistrate, the prisoner charged the deceased with having wounded him during his sleep; he said he did not know how the deceased was killed. Luckhea his wife also stated, that she was wounded by the deceased, no doubt this charge was made to save her husband. The prisoner attributed their disputes to the partition of the property, while his wife assigned as the cause her upbraiding the deceased for her loose conduct.

The sessions judge and jury convict the prisoner of wilful murder; I concur in the finding, but I cannot admit the grounds urged by the judge for mitigation of sentence. He is of opinion, that the prisoner " committed the act under a sudden paroxysm of passion amounting to temporary derangement," now if this fact were proved, the prisoner would not be a fit subject for a penal sentence. The witnesses have, however, been examined on this point and they have unanimously deposed, that the prisoner never was out of his mind.

1853.

April 1.
Case of
LUCKHUN
CHYEN.

There is no cause assigned on the record for this sudden accession of paroxysm of passion, nor is any justification pleaded; having murdered one woman and severely wounded his own wife, the attempt on his own life when an endeavour was made to seize him, does not prove insanity or exonerate the prisoner from the responsibility of his acts.

With this view of the case, it is my duty to propose that capital sentence be passed on the prisoner; the record must therefore be submitted for another opinion.

MR. JACKSON.—The prisoner *Luckhun* was seen by several standing a little way from his house, flourishing a *hanswah* and threatening those who came near; the deceased Monia, lay near dead with several severe wounds and prisoner's wife with a wound on the throat lay there also; the prisoner then with the same *hanswah* cut his own throat and fell down; there was a dispute regarding the property of Monia's deceased husband, a part of which was claimed by the prisoner; the prisoner's wife says, that Monia attacked and wounded her first; but there is no reason to believe this, I convict the prisoner, *Luckhun*, of the murder of Monia, and would sentence him to suffer death

I find no reasons for attributing mental derangement to the prisoner; a paroxysm of anger, unless shewn to be founded on great provocation, is no ground for mitigation.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

MUSSUMMAT KASHEEPREEAH AND GOVERNMENT,

versus

SHEIK KHOSAUL (No. 1), SHEIK DHONIE (No. 2), SHEIK KETABOODDEEN (No. 3), AND SHEIK MUNNEEROODEEN, APPELLANT, (No. 4).

DACCA.

1853.

April 2nd.

Case of
SHEIKH
MUNNEE-
ROODDEEN.

The appeal of the prisoner, (appellant) was rejected, and the nature of the offence committed by his companions defined to be rather murder than culpable homicide.

CRIME CHARGED.—*1st count*—Wilful murder of Soobul Mundul, son of the prosecutrix; *2nd count*—Being accomplices, aiding and abetting in the same.

CRIME ESTABLISHED.—Being accomplices and accessaries after the fact to the crime of the culpable homicide of Soobul Mundul.

Committing Officer—Mr. T. Tweedie, deputy magistrate of Moonsheegunge zillah Dacca.

1853.

April 2.

Case of SHEIKH MUNNEE-ROODDEEN

Tried before Mr. H. T. Raikes, officiating commissioner, with powers of sessions judge, zillah Dacca, on the 17th January 1853.

Remarks by the officiating commissioner, with powers of sessions judge.—It appeared that the deceased had for some time carried on an intrigue with the witness, Sobha, (a widow), whom he was in the habit of visiting at night. On the night in question he had gone to her house and had apparently been watched by one or other of the prisoners, who gave notice of his being there to the rest, for they then surrounded the house and demanded admittance. Sobha refused to open the door, and the prisoner Dhonie then broke it open, and Khosaul sending Muneerooddeen for a light, Dhonie followed the deceased to a *mechan*, where he had attempted to hide himself, and where a struggle ensued between the two, which brought them both to the ground. The prisoners, Khosaul, Dhonie and Ketabooddeen then set upon him and assaulted him with their fists, and Khosaul is said to have struck him a blow with a bludgeon he had in his hand, Muneerooddeen at the time standing by, but taking no active part in the assault. The prisoners after beating the deceased took him away towards the house of Dhonie, and beyond this, the witnesses know nothing. The prisoners, however, in their confessions to the police and repeated before the magistrate, admit having assaulted the deceased in Sobha's house, and having removed him to a short distance where he died, they* then took him to Dhonie's house and procured a boat in which they placed the body and sunk it in the *Kirteenassa* river, by means of a bag filled with earth attached to the body.

* *From the Register of the Nizamut Adawlut to the Officiating Commissioner of Dacca, with the powers of a sessions judge, No. 185, dated 12th February 1853.*

The court, having had before them your letter No. 9, of the 1st instant, submitting the statements connected with the sessions of jail delivery held by you in the month of January last, and referring to the case of Sheik Khosaul and others, Nos. 1 to 4 of Statement No. 6, observe that the circumstances stated in your remarks "they (the prisoners) then took him (the deceased) to Dhonie's house, and procured a boat in which they placed the body, and sunk it in the *Kirtenassa* river by means of a bag filled with earth attached to the body;" do not connstitute acessaryship after the fact as defined in Circular Order, No. 8, of the 7th June 1817. There was, therefore, no necessity to convict of it, but the court doubt, whether such was your intention, for the futwa returned a verdict of only aiding and abetting in culpable homicide against the prisoners, Nos. 1 to 3; adding to that verdict accessaryship after the fact against No. 4.

From the Officiating Commissioner of Revenue Dacca, exercising the powers of a sessions judge to the Register of the Nizamut Adawlut, No. 9 of 1853, dated 23rd February 1853.

In reply to your letter, No. 185, dated the 12th instant, I have the honor to state, that the court has correctly surmised that it was not my intention to convict of accessaryship after the fact. It should have been only aiding and abetting.

1853.

April 2.

Case of SHEIKH MUNNEE-ROODDEEN.

The prisoners pleaded not guilty in this court. But the above facts were satisfactorily proved, and there is no reason to doubt the truth of the confessions of the prisoners. The witnesses who are neighbours of the parties concerned, state that it was generally believed the deceased had intrigued with the prisoner Khosaul's wife, who thus became pregnant during her husband's absence. The prisoner, Khosaul, himself denied this, and in his confessions assigned no other reason for their conduct, than a wish to punish the deceased for the disgrace he had brought upon Sobha's husband's memory, who was his friend.

There was no relationship between the prisoners and this woman's deceased husband or herself.

The moulvee returned a verdict of aiding and abetting in culpable homicide and accessaries after the fact against the prisoners, Nos. 1, 2, 3 and accomplice and accessary after the fact against No. 4. I concurred in the finding, but as Khosaul had evidently been the chief instigator and Muneerooddeen took a less active part than the others in the assault, I awarded to them respectively a different measure of punishment.

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment with labor. Nos. 2 and 3, each to five (5) years' imprisonment with labor, and No. 4, to be imprisoned without irons for three (3) years from this date, and to pay a fine of rupees fifty (50) within a month, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson). —I see no reason to interfere with the sentence upon *Muneerooddeen*, who has appealed; he went with the party and was present with them when they broke into the widow's house and seized Soobul, and dragged him away, beating him; he also assisted in concealing the body when they had killed him; he was therefore an accomplice in the attack, and was accessary also after the fact in aiding the principals to conceal the crime; but I am at a loss to discover, why the sessions judge convicted the other prisoners of culpable homicide, instead of murder as charged; the deceased was in the house of Sobha, a widow, with whom he had lived for years in terms of intimacy since her husband's death; the four prisoners broke open the door, dragged him out and beat him till they killed him; they then threw his body into the river; there was no provocation whatever at the time, but Khosaul, prisoner, accused the deceased of having an intimacy with his wife; this evidently would not affect the nature of the act, which was clearly murder.

PRESENT:
W. B. JACKSON, Esq., *Judge.*
GOVERNMENT
versus
RAMCHUNDER BAGDEE (No 1), AND BUDDUN BAGDEE (No 2),

24-PERGUNNAHS.

1853.

April 2.
Case of RAMCHUNDER BAGDEE and another.
The evidence to the recognition of the prisoners at the commission of the dacoity charged against them being conclusive, the appeal was rejected.

CRIME CHARGED.—River dacoity on the boat of Ramdhone Roy, in which property valued at Company's Rupees 170-15-9, was plundered.

CRIME ESTABLISHED.—River dacoity.

Committing Officer—Mr. E Jackson, joint magistrate of Baraset.

Tried before Mr. E Bentall, additional sessions judge of zillah 24-Pergunnahs, on the 10th February 1853.

Remarks by the additional sessions judge.—A man called Ramdhun, had been a burkundauz in the thannah of Busheerhaut, in the district of Baraset, where he knew the prisoners by sight; he was discharged from his office and was on his way with other people to Calcutta in a boat; about 12 o'clock at night, when at a place called Talamara, they were attacked by dacoits and robbed. Ramdhun said at the time that he had recognized the prisoners and another man, and having gone with the other people who were in the boat to the pharee he accused them. The police went to their houses, but they could not be found, and they were not apprehended for nearly a month. The dacoitee took place about a coss from the houses of the prisoners. Although there is but one eye-witness to the case, yet the evidence has a truthful appearance and there are no suspicious points in it, as the burkundauz did not tell his story as if it were creditable to himself. There is no accusation of enmity between the burkundauz and the prisoners. The prisoners being absent from their homes, and their having absconded are circumstances which tell against them. They had no defence to make, except as to character, and it appears that they had previously been in jail. The evidence does not amount to full legal proof, but it can be trusted.

Sentence passed by the lower court.—To be imprisoned with labor and irons for ten years each.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The prosecutor's boat was attacked and robbed at night; the prosecutor said immediately that he recognized the two prisoners under trial, and one other man among the robbers; it does not appear that the robbers were disguised; the prisoners absconded from home, and a burkundauz says they have before been punished for robbery; the prosecutor

1853.

April 2.

Case of RAMCHUNDER BAGDEE and another.

knew the prisoners before as *latteals* in the service of a planter. In a regular dacoity, committed by professional thieves disguised, recognition is almost impossible; but I see no sufficient reason to reject the evidence of the prosecutor in this case. With reference to the observation of the sessions judge, that as there is only one witness, there is only presumptive, not full legal proof, it is to be remarked, that the evidence of one man, if such as to deserve confidence, is full legal proof; there is no law requiring the evidence of two to substantiate a fact:—moreover, this evidence being positive and direct, cannot be looked on as presumptive proof, which rather refers to proof to substantiate facts from which guilt is presumed on the main fact at issue.

I see no reason to interfere.

PRESENT:

J. DUNBAR, ESQ., *Judge*.

GOVERNMENT AND HUREE GURAIN

versus

NYAN LOHAR.

BEERBHOOM.

1853.

April 2.

Case of NYAN LOHAR.

The prisoner was convicted of dacoity with torture, on his own repeated confessions.

CRIME CHARGED.—1*st count*, Dacoity attended with torture, committed in the house of Huree Gurain, prosecutor, from whence property valued at rupees 58-5 annas, was plundered; 2*nd count*, being an accomplice in the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity attended with torture.

Committing Officer—Moulvee Fyzoollah, law officer, with full magisterial powers, Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 8th February 1853.

Remarks by the sessions judge.—The prosecutor's house was attacked on the night of the 8th December last, by a gang of thirty dacoits and plundered of property valued at rupees 58-5. They first laid hold of the village chowkeedar, Khetoo, witness No. 10, and bound him so as to prevent his offering them resistance, and in order to compel the prosecutor to disclose where his valuables were concealed, they burnt him with a lighted torch severely on the arm and on both sides of his body.

The prisoner was apprehended on information furnished by Nuddea chowkeedar to whom he admitted that he had joined the gang who had committed the dacoity in the prosecutor's house. He confessed also before the darogah on the 14th December, and before the magistrate on the 15th idem, and both statements are attested in a satisfactory manner.

1853.

April 2.

Case of NYAN LOHAR.

In this court the prisoner pleaded not guilty, and stated, that he was no dacoit or thief, nor had ever before been apprehended. He disavowed both his previous confessions, which he declared had been extorted from him by the police. Only one of the five witnesses called by him to prove his respectability, could speak favorably of his character.

The jury with whose assistance I tried this case were unanimous in their opinion of the prisoner's guilt on the 1st count of the charge, and delivered their verdict accordingly.

I see myself no reason to entertain a doubt on the subject; his confessions before the darogah and before the magistrate are proved to have been made voluntarily and without coercion, and the admission of guilt which he made to Nuddea chowkeedar, whose evidence is corroborated by the depositions of Ramdyal Mundul and Radagovind Mundul, who were not entered in the calendar as witnesses, but were summoned by this court, disprove his allegation, that his confession was forced from him by the police. In concurrence, therefore, with the verdict of the jury, I convict the prisoner, Nyan Lohar of dacoity, attended with torture in the house of the prosecutor, and sentence him to twelve years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—In his petition of appeal, the prisoner asserts, that his first confession was extorted by the police. There is satisfactory evidence as to the entirely voluntary character both of that confession and of the one subsequently made before the magistrate. On the trial, he alleged, that the latter had been copied from the mofussil confession. I find, however, that though substantially to the same effect, they differ considerably in the wording. I see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

KOILAS CHUNDER SIRCAR AND GOVERNMENT

versus

SISTEEDHUR GHOSE (No. 1), DHUNNYE SIRDAR (No. 2), MANOO SIRDAR (No. 3), GOPAL SHEIKH (No. 4), GHOLAMEE SHEIKH (No, 5 NON-APPELLANT), AND KALOO SHEIKH (No. 6,).

NUDDEA.

1853.

April 2.

Case of SISTEEDHUR GHOSE and others.

The proof against the prisoners being ample their appeal was rejected.

CRIME CHARGED.—Dacoity in the house of the prosecutor, Koilas Chunder Sircar, by which property to the value of rupees 229-8 annas, was plundered.—*2nd count,* being accomplices in the said crime; *prisoners Nos.* 2 *and* 3,—*3rd count,* accomplices before the fact; *prisoners* 1 *to* 6—*on a fourth count,* of having and keeping in their possession a portion of the said property, knowing it to have been acquired by the said dacoity.

CRIME ESTABLISHED.—Nos. 1 to 5, Dacoity in the house of the prosecutor, Koilas Chunder Sircar, in which property to the value of rupees 229-8 annas, was plundered; prisoner 6, being an accomplice in the crime, and prisoners, Nos. 1 to 6, also having and keeping in their possession a portion of the plundered property, knowing it to have been obtained by the said dacoity.

Committing Officer—Mr. C. F. Montressor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 1st January 1853.

Remarks by the sessions judge.—Although prisoners 1, 5 and 6, confessed in the mofussil, and prisoners, 1 and 6, before the magistrate, the whole of the prisoners pleaded "not guilty" in this court.

The crime of dacoity has, however, been clearly proved against the prisoners by the evidence of the witnesses, the finding of a portion of the property plundered, and the confessions above-mentioned, which have been proved to have been voluntarily made.

The chowkeedar of a village through which the dacoits had to pass, observed the day previous to it, that prisoners, Nos. 2 and 3, and 6 or 8 suspicious characters had assembled in an unfrequented spot to the southward of his village and mentioned the fact to a burkundaz, who seized prisoner, No. 1, with a portion of the stolen property on him early next morning.

Amongst the stolen property found with Manoo Sirdar, was a brass *garoo* or water jug with a spout. This he claimed as his own, but independent of the prosecutor having proved that it belonged to him, such an article is never used by a Mahomedan but by Hindoos solely.

Sentence passed by the lower court.—Seven years' imprisonment and two years' in lieu of corporal punishment—being in aggregate to nine (9) years' each with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson).—I see no reason to interfere with the finding and sentence against the prisoners, *Sisteedhur*, *Dhunnye*, *Manoo*, *Gopal* and *Kaloo*; the first and last confessed before the magistrate, and property sworn to by plaintiff was found on the other three.

1853. April 2. Case of Sisteedhur Ghose and others.

Present:

J. R. COLVIN, Esq., *Judge.*

A. J. M. MILLS, Esq., *Officiating Judge.*

GOVERNMENT and others

versus

JADOO (No. 1), BHEEM (No. 2), BEGO (No. 3), LUCHMUN (No. 4), JAGGARAM (No. 5), CHUNDOO (No. 6), LUCHUN alias BUHERA (No. 7), HOONLO (No. 8), KHOODEEA (No. 9).

Hazareebagh. 1853. April 4. Case of Jadoo and others. Prisoners charged with wilful murder and severely wounding another party, convicted as principals, and accomplices in an affray attended with aggravated culpable homicide.

Crime Charged.—Wilful murder of Kishoon Sing, *alias* Birjlall Sing and Kunjbeharry Sing, sons of Bode Sing, prosecutor, and Sonoo Aheer, brother of Beny, prosecutor, and severely wounding, Nuther Deo, prosecutor with intent to do him some bodily injury.

Committing Officer,—Captain W. H. Oakes, principal assistant to the agent, governor general, Lohardugga.

Tried before Major J. Hannyngton, deputy commissioner, Chota Nagpore, on the 6th October 1852.

Remarks by the deputy commissioner.—On the 8th April last, Lal Mohur Deo, (witness No. 33), brought information to the police officer at Palkote; that on that morning his brother, the prosecutor, Lal Nuther Deo, had gone to the store of one Gungabishen in Ghugra village, and had there been assaulted by Jaggaram, Bheem, Nukool, Chandrae, Hurbuns Maga and others, in all about three hundred persons, and that five men servants of Gungabishen had been killed and two were dying. The informant said that he had seen this himself.

In consequence of this information, the prisoners Nos. 1 to 9, were apprehended on various dates between the 9th April, and 27th July, and some of the persons said to be implicated have not yet been taken.

The evidence before this court is as follows:—The prosecutor, Bode Sing, whose sons, Kunjbehary, and Kishen, *alias* Birjlal, have been killed, has no direct knowledge of the facts.

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April 4.

Case of JADOO and others.

The prosecutor, Benee Gwalla, is also ignorant of the facts. His brother, Sona, has been killed.

The prosecutor Lal Nuther Deo states, that on a Wednesday in Bysakh, he went to Ghagra village for the purpose of collecting some debts. He was standing at a tamarind tree near to Gungabishen's store and he saw there three soldiers, besides Kurma (witness No. 1), Putia (witness No. 3), Maga (witness No. 4), and Nurkoo (witness No. 2). Presently Jaga, Bheem, Nakool, Chandrae, Hurbuns, Jadoo, Bheem, 2nd, Bego, Luchun Motia, Loleet, Preag, Deboo, Ahlad, Udai Telee, Khoodea, Baona Khera, Hundla, Rup Sing, Mokund and others, armed with staves, clubs, bows and arrows, battle axes, swords and matchlocks, came to the store and began to abuse the soldiers, saying, "go away, leave this," to which the soldiers answered, "why should we go." More words passed and then Jaga said to Bheem* strike, whereupon Bheem wounded Sona Aheer, with an arrow in the breast, he fell and Jaga struck him with a sword. Kunjbehary then remonstrated, Jaga gave the word, and Jadoo wounded Kunjbehary with an arrow in the back, he fell and then Bheem,* and Nohal and Chandrae, and Hurbuns, and Mokund, and two or three other persons, surrounded him and cut him so, that he died instantly. Kishen now came runing and crying out "why have you killed my brother." Nukool wounded him with an arrow, he sat down; Jaga came and struck him on the head and he fell. Witness then began to remonstrate with Jaga, who said "this fellow will give evidence"; witness ran to an Indian fig tree; they surrounded him; Khudea wounded him with an arrow in the right leg; Udai in the left leg; he fell and Alhad struck him on the head with a battle-axe; he was beaten on all sides and was, he does not know how, carried to Jaga's house, where they rubbed him with oil, and when he recovered his senses, he perceived that he was lying on a cot surrounded by men, some said "kill him," some said "do not," witness said, he had nothing to do with Ghagra, why should they kill him. It was then night and prosecutor was left with Jadoo, Luchun, Bheem and Bego, others went to bury the bodies; they said when we return we will kill him. Towards morning the darogah, burkundazes and prosecutor's brother, Mohun, came and released prosecutor. Four of the prisoners were apprehended and prosecutor gave his deposition. The debts that prosecutor was collecting amount to one and a half rupees and some rice. Prosecutor did not come to Ghagra with a body of men.

The prisoners plead not guilty.

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* This Bheem is the son of Gohun, not the prisoner No. 2, who is the son of Muhly. The distinction is important.

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April 4.
Case of JADOO and others.

No. 1, *Witness Kurma.*—One wednesday morning in Bysakh, witness was at a tamarind tree near the store, and saw the prisoner Jaga with 20 or 25 men, come from Karaujtola* to the store where were Sona and Kunjbehary and Kishen, soldiers of Gunga Bishen. Jaga said "you must leave the store" they replied, "we have come to collect rents why should we go." On this Jaga said "stirke" and then Bheem, (son of Gohan) wounded Sona with an arrow, he sat down and then Jaga struck him two blows with a sword, so that he died; Kunjbehary then spoke and Jadoo wounded him in the back with an arrow, he sat down, and Bheem, Jaga, Hurbuns and Chandrae surrounded him and killed him. Kishen asked "why have you killed my brother," on which Nukool wounded him with an arrow in the thigh, he fell, Jaga struck him two blows on the head and he died. Lal Nuther Deo had come that day to collect debts; he was standing about ten paces distant; he said "why have you done this." They all ran at him, he fled to an Indian fig tree; they surrounded him; Khudea wounded him with an arrow, and Alhad struck him with a sword. They threw clods and stones, witness went away and does not know what more happened. The soldiers were not armed. There were in the store about fifty maunds of uncleaned rice, and six pairs of bullocks.† The soldiers were for managing the farm and collecting the rents. Kunjbehary and Kishen had been in the store for eight or ten days and Sona for six months. Jaga had had no previous dispute with them, and witness does not know why he attacked them. Nuther Deo only came that day; Gungabishen had the village in farm for eight years, and in last Bysakh bought the perpetuity of it from Hurbuns. There were with Jaga, Bheem, Jadoo, Luchun, Son of Kooriabigoo, Luchun Bohera, Hurbuns, Chandrae, Bheem 2nd, Nakool, Rup Sing, Gundul Alhad and Dolu, witness does not know what became of the bodies. The villagers of Ghagra were all absent, gathering fruit, they went here and there and did not at that time return to the village; Witness saw Kudea and Hundloo at the fray; did not name Hundloo before the principal assistant, because he was not asked about him. Bheem who wounded Sona is not the prisoner No. 2, but Bheem the Son of Gohan No. 2, witness; Nurkoo Sing came to Ghagra in the morning and hearing altercation, went to the tamarind tree near the store and saw the facts, which he relates in exactly the same order as witness No 1. Bheem, (son of Gohan,) wounded Sona with an arrow, and then Jaga struck him two blows with a sword and killed him. Kunjbehary was next wounded with an arrow

* A hamlet within Ghagra village.
† The value of this property might be about rupees 60 or 70.

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by Jadoo, and then Bheem, Nakool, Mokund, Chandrae, Hurbuns and others surrounded and killed him. Kishen remonstrated, whereupon Nakool wounded him in the thigh with an arrow, and Jaga struck him two blows with a sword and killed him. Lal Nuther Deo then spoke,—fled,—was pursued by several persons, was wounded with an arrow by Khudea and with a battle-axe by Ahlad; having seen which witness ran home; witness has this year taken a farm in Ghagra from Gungabishen. Witness saw the prisoners Luchun and Khudea and Hoondlo at the fray. It was Bheem, the son of Gohan, and not the prisoner No. 2, who wounded Sona, Hurbuns is the former jageerdar of Ghagra.

No. 3. *Witness Puttera,*—states the same particulars respecting the affray without any material variation. Saw on the spot the following persons concerned therein, namely, Jaga, Jadoo, Bheem, son of Gohan, Hurbuns, Chandrae, Nakool, Mokund, Dalu, Ahlad, Lochun, Luchun Behra, Bheem 2nd, Chanda, Rup Sing, Khudea, Kadua, Bego and Arjun. Hundloo was present also. Witness forgot to name him before the principal assistant.

No. 4. *Witness Maza,* strictly corroborates the foregoing evidence. Saw on the spot, Jaga, Jadoo, Lochun Behra, Luchun, Alhad, Motia, Dalu, Nakool, Bheem, son of Gohan, Hurbuns, Chandrae, Gandura, Rup Sing, Khudea, Hoonlo, Bheem 2nd, Bego and Chundoo. Witness does not know the cause of the dispute. Ghagra now belongs to Gungabishen, formerly it belonged to Hurbuns. Jaga is the paternal first cousin of Hurbuns.

No.	5.	Witness	Sewraj Sing.
,,	6.	,,	Munbode Sing.
,,	7.	,,	Koonjbeharry.
,,	8.	,,	Sewbux Lall.
,,	9.	,,	Ramchurna.
,,	10.	,,	Abheelok Sing.
,,	11.	,,	Debee Lall.
,,	12.	,,	Sona.
,,	13.	,,	Bheersa

These witnesses prove the apprehension of the prisoners. The witness No. 5, is the darogah. He came by night with a party of 100 men and surrounded the house of the prisoner, Jaggaram, in Ghagra village. At daylight the prisoners Nos. 1 to 4, were taken up in the house; the prosecutor Lal Nuther Deo was found lying on a cot in an adjoining house. The prisoner, Jaggaram, No. 5, was not in the house. He was taken up at the agency station. (On this point see his defence).

No.	Witness	Hem Lall.
		Bhurut Sing.
		Khuruun.
		Molar.
		Gopee.
		Dookha.

These witnesses prove the finding of the bodies, and the inquest held on them. The bodies of Kishen Sing and Sona Aheer, were after much search, on the evening of the

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Case of JADOO and others.

No. 20.	Witness	Gungooa.
" 21.	"	Chulgoo.
" 22.	"	Gungabishen.
" 23.	"	Boodhoo.
" 24.	"	Goona.

9th April, found buried in the sands of the Coel river, at 90 paces distant from each other, and within the boundaries of Nagphenee village, which is about two miles distant from the scene of the murders. The body of Kunjbehary was found on the 13th April. It had been thrown into deep part of the river, and had afterwards risen to the surface. The wounds described in the record of the inquest are as follows:—

On the body of Kishen Sing, *alias* Birj Lall.	1. Sword cut on right ear. 2. Sword cut on the left side of the head. 3. Sword cut on forehead. 4. Arrow on left eyebrow. 5. Arrow on left thigh.
On the body of Sona Aheer.	1. Sword cut on left side of head. 2. Arrow on right breast below the collar bone.
On the body of Kunjbehary Sing.	1 to 5. Five sword cuts on the cranium. 6. Sword cut on left cheek. 7. Arrow on back. 8. Arrow on left shoulder.

No. 22, *witness Gungabishen.*—I recur to the evidence of this witness to notice his statement respecting the purchase of the village of Ghagra from Hurbuns: witness states, that Hurbuns, the proprietor of Ghagra, had let it in farm to witness, for six or seven years at a rent of rupees 65, and in the year of the fair at Sillee, (1851,) in the month of Phalgoon, Hurbuns for a consideration exceeding rupees 1,100 granted the village to witness in perpetuity, to which the approval of the maharajah was obtained. The murdered persons were witness's servants, Kunjbehary and Kishen were from Magha. There are numbers of Magha people now employed in the country. The prisoner, Jadoo (No. 1), is an illegitimate son of Hurbuns; Jadoo was not present at the time of the sale. Juggaram never objected to the sale. Of the purchase money rupees 500, was an old account, the rest rupees 600 odd, was paid in cash.

No. 25.	Witness	Merkoo Sing.
" 26.	"	Samoo.

Prove the confessions of the prisoners Nos. 1 to 4, made before the police officers. These confessions are to the effect, that the prisoners accompanied the prisoner Jaggaram, and were present at the murders; but that the prisoners did not themselves strike any one. They

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name nearly all those who are named by the witnesses Nos. 1 to 4, as having been also present. These confessions were not recorded until the prisoners had been two or more days confined in irons.

No. 27.	Witness	Abdoolla Khan.
28.		Bhuttu Khan.
29.		Shaik Allum Ally.
30.		Meer Owlad Ally.
31.		Naum Oollah.
32.		Shaik Godha.

Prove the confessions of the prisoners Nos. 1 to 3, and 8, before the principal assistant. These are to the same effect as the previous confessions, but of their fellow-prisoners more are named in the former than in the latter confessions.

No. 33, *witness Mohur Deo.*—Early one morning on a Wednesday, in Bysakh, witness's brother, the prosecutor Lal Nuther Deo, told witness that he was going towards Ghagra to collect debts. A little while afterwards witness was standing on the road and some men who were coming from Palkote, told witness that the prisoner Jaga, with a body of men had killed some of Gungabishen's servants at the store in Ghagra, and had also beaten some one, a Lall, who had gone there, all which the narrators had seen. Hearing this witness went immediately to Ghagra and there, near the store, he saw three men, servants of Gungabishen lying dead and several people from Birkera,* were there, they said that Jaga and others had beaten and carried away Lall Nuther Deo, that some other men had been killed, and that witness should fly for his life, lest they should kill him also; witness then went to Palkote and gave information to the police. Witness was present at the inquiry by the police, and saw the apprehension of the prisoners Nos. 1 to 4 in Jaga's house. Lal Nuther Deo was found in Jaga's house in a feeble condition. Witness does not know the men who spoke to him on the road. Does not know the Birkera people who spoke to him at the store. Witness named to the police some persons concerned in the murder who were mentioned by the Birkera people. Witness gave his statement on solemn affirmation before the police officer. Does not remember whether he told about the Birkera people. The statement now read to him is his statement; what he had heard, he said he had heard, what he had seen, he said he had seen; he was weeping, because his brother had been beaten and his mind was troubled.

No. 35, *Witness Chepoa.*—On Monday morning in Bysakh, saw Lal Nuther Deo with about forty armed men going towards Ghagra; did not know any one but Nuther Deo; does not know of any subsequent fray; was sent in a prisoner in this case.

* A village close to Ghagra.

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No. 36, *Witness Bishonath, as No.* 35.—Lall Nuther Deo went on Monday, and witness heard of the fray on Wednesday following, was made prisoner in this case.

No. 38, *Witness Hurnath Sing.*—To the same effect, Nurkoo Sing and Lohur Sing were with the party. Lall Nuther Deo asked witness to give false evidence about the prisoner Jaga, which witness would not do.

The prisoner Jadoo in his defence states, that Gungabishen, Mohur Deo, and the burkundauzes, Ramchurn and Sewbux Lall, instructed him to make a confession implicating Jaggaram, and they promised to restore his lands. On a Monday, Nuther Deo came with an army to the village, and on Tuesday night, surrounded the house and beat the prisoners. The darogah came on Thursday, put them in irons and then took their answer. He has received a bribe of rupees 300 and has written what he pleased. What the prisoner said before the principal assistant, was what he had been taught.

The prisoner Bheem in his defence states, that Nuther Deo came on Monday, and on Tuesday night came to Jaggaram's house and assaulted the inmates and wounded the prisoner. On Thursday, the darogah came and took him up. Ramchurn burkundauz induced him to confess, naming certain persons, promising freedom as a reward. What the prisoner said before the principal assistant, was according to instructions.

The prisoner Bego in his defence states, that on a Tuesday night, he was sleeping at Jaggaram's house, when Nuther Deo, Mohur Deo and Gungabishen came with an army and plundered Jaggaram's house. Sona Modee struck prisoner on the head and knocked him down. On Wednesday morning, Jaggaram went to complain at Rauchee; and on Thursday, the darogah came and took up the prisoners. The darogah got a bribe of rupees 300, and brought the prisoners to Porha, and whoever was named by Gungabishen and Mohur Deo, him prisoner named; against whomsoever they bore ill-will, him they named, but prisoner lives eight miles off, and knows none of those persons. Before the principal assistant, the prisoner spoke as he was told to do.

The prisoner Luchun in his defence says, that on hearing Nuther Deo attacking Jaggaram's house, prisoner fled into the fields, and next morning found that Bego and Bheem and Jadoo were wounded. Jaggaram told him to take care of the wounded men while he went to complain at Rauchee, which prisoner accordingly did, and at dawn the next morning, the darogah came and took them all up; and though prisoner were beaten, yet he would not and did not confess.

The prisoner Jaggaram in his defence states, that in Kartick last, he made a complaint, but the princaipl assistant of

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Lohardugga when on his tour in the month of Magh struck off the case. Prisoner then went to his home, and thence to Palkote, where he remained during Phalgoon. When fifteen days of Chyte had elapsed, Nuther Deo, Mohur Deo, Radhe Kishen and Gungabishen with a mob came and burned prisoner's store, destroying 600 maunds of grain. On hearing of this, at Palkote, prisoner came home and then Mohur Deo and Gungabishen went to Ranchee to Pande Gunpat Rae, to whom Nuther Deo is *factotum*, and having made a consultation, when thirteen days of the bright lunation had passed, Nuther Deo and Mohur Deo went on a Friday to Sumbul, where they gathered a mob. On Sunday, Nuther Deo came to Pandria and got brahmins to fix a day. On Monday, he came to Ghagra. On Tuesday evening he surrounded prisoner's house with lighted torches and made a noise; prisoner came out and was knocked down by a blow on the head. Prisoner remained insensible till midnight; when recovering he found that Bheem had been wounded with a sword and Bego and Jadoo had also been wounded and were very ill Prisoner had them rubbed with oil, by which time morning broke and prisoner said to Luchun, "you will take care of these people while I go to the gentleman at Ranchee." So prisoner came this way and there the darogah took all up and sent them in. Prisoner had gone to the agent's house to make a complaint, but the darogah had sent in a report and Ramchurn burkundauz took the prisoner up at the agent's house. Prisoner is not guilty of these murders.

The prisoner Chundoo in his defence states, that he was at Sunooreea village, six miles from his home, and was not present at the fray.

The prisoner Hoonlo in his defence states, that he was absent at Kashee and Preag. His confession before the principal assistant was made at the instance of Gungabishen.

The prisoner Khoodea in his defence states, that the witnesses have *falsely* named him. The prosecutor, Nuther Deo, and Pande Gunpat Rae in Chyte last, wanted him to give false evidence in a dacoitee case, but he would not and he told the truth before the principal assistant.

For the defence.

No. 38, *witness Hurnath Sing.*—One day in Kartick, Nuther Deo went to plunder the prisoner Jaggaram's crop, witness was at Birkera and saw the party going. They made a counter accusation, and put Jaga's people in confinement at the police station, and they have sent them here now. In Phalgoon, Nuther Deo burned down Jaga's store; Nuther is the associate of Gungabishen; witness saw the store burning, who but Nuther Deo would set it on fire? Jaga made a complaint about it.

No. 40, *witness Dhoocheea.*—In Bysakh, Nuther Deo brought a mob to the prisoner Jaga's house.

No. 42, *witness Byjnath Sing.*—In Kartick, Gungabishen and Nuther Deo with forty men went to cut the prisoner Jaga's rice, witness saw them going.

No. 44, *witness Doma.*—One day in the beginning of Bysakh, saw Nuther Deo with an armed gang of about forty men, going to Ghagra. Two days afterwards, witness heard of a fray having occurred there.

No. 46, *witness Dalaya.*—As the preceding witness, but he did not hear of a fray.

No. 47, *witness Nunkoo.*—To the same effect, did not know any others of the party.

No. 49, *witness Jhobla.*—On a Tuesday, in Bysakh, in the morning saw the prisoner Chundoo going towards Sonoreea; Nuther Deo with a gang was going from Birkera to Ghagra; Nuther Deo had a staff in his hand, and a sword by his side, and a cloth on his head. The rest had bows and arrows and swords, witness did not know any of them.

No. 50, *witness Ahlad.*—On a Tuesday morning in Bysakh, saw the prisoner Chundoo going towards Sonoreea.

No. 51, *witness Ajoynath.*—On a Monday morning in Bysakh saw Nuther Deo with a gang of about forty men going towards Ghagra. Did not know any other of the party.

The remaining witnesses for the defence speak only to the good character of the prisoners.

Further, as matter of defence, and at the request of the prisoner Jaggaram, No. 5, the papers relative to his complaint against Nuther Deo and others, were called for and have been put with the record. From these it appears, that on the 8th November 1851, Jaggaram made petition to the principal assistant, that Mohur Deo, Nuther Deo, Gungabishen and others, had, on Thursday, the 7th Kartick, come in force and had beaten him and plundered his crop, and that the darogah had imprisoned for four days, the following persons, namely, Ahlad, Magan, Jadoo, Ajainath, Preag and Bheeput, who had accompanied him to the police station. This petition was supported by his deposition to the same effect.

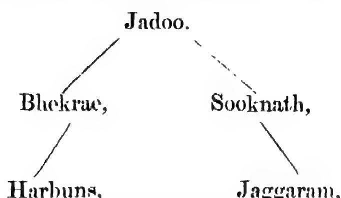
No proceeding took place till the 21st November, when the plaintiff deposited the hire of a constable, who being then deputed, reported on the 17th December, that the defendants could not be found and that he therefore had let the witnesses go.

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On the 18th December, Harbuns Rae, jageerdar of Ghagra, made petition to the assistant, stating that his descent was as follows:—



that he is the chief proprietor and Jaggaram a sharer, and that the persons named by Jaggaram were cutting and plundering his crops.

On the 30th December, the plaintiff was thrice called and being absent, the case was struck off the file.

The jury whose names are entered below,* find the prisoner No. 5, Jaggaram guilty of wilful murder, Jadoo No. 1. and Khoodea No. 9, guilty of wounding, and the prisoners Nos. 2, 3, 4, 6, 7, 8, guilty of being concerned in affray with murder.

This finding is, I think, according to the evidence, and I concur in it. The jury are satisfied that Nuther Deo had brought an armed gang, and that a mutual affray took place, and certainly the whole tenor of the case raises a strong presumption that such was the fact. But on the other hand the weight of injury is wholly on one side, and the persons killed were the men in charge of the store. If therefore Nuther Deo did bring a force, it was ineffective, and probably made no opposition. Jaggaram and his party were the aggressors; their object was to remove the servants from the store of Gungabishen, and this they did by killing them all; the act appears to have been predetermined and was executed with savage resolution. That the prisoner Jaggaram gave the finishing blows to Sona Aheer and Kishen Sing, is very positively asserted by the witnesses, but by whom Kunjbehary was killed is not certain. The circumstances stated are not a little remarkable. *First.*—Sona is killed outright, then Kunjbehary remonstrates, and is next killed outright. Now, Nuther Deo remonstrates and is pursued, wounded, carried away, is tenderly treated, laid on a cot, rubbed with oil and brought to his senses, that he may recognize the men who guard him, and whose guardianship is to terminate in his murder, when the men who went to bury the dead, return. To extract from such a detail the precise truth, is impossible. What I believe

* Nundram Dutt, Moktear, Lalla Gujraj Sing ditto, Lalla Luchmenaram, ditto.

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of the evidence is this. That the prisoner Jaggaram No. 5, took with him a gang of armed men and went to the store of Gungabishen, where he, Jaggaram, and his party attacked and murdered Sona Aheer and Kishen Sing, and Kunjbehary Sing; that the prisoner Jaggaram did personally assault, with a sword one or more of the said murdered parties, and that the prisoners Nos. 1, 2, 3, 4, 6, 7, 8 and 9 were present, aiding, abetting and consenting to the murder of the said Sona Aheer and Kishen Sing and Kunjbehary Sing. The proof against prisoners Nos. 1, 2 and 3, is the direct evidence of three witnesses, and the twice repeated confessions of the prisoners themselves. The proof against the prisoners Nos. 4 and 5, is the direct evidence of four witnesses. The proof against No. 6, is the direct evidence of two witnesses, and it may be noted, that the prisoner Jadoo in his first confession made on the 14th April, named this prisoner. The proof against the prisoner No. 8, is the direct evidence of four witnesses, supported by his confession before the principal assistant. The proof against the prisoner No. 9, is the direct evidence of four witnesses.

I have in this report prominently noticed the matters of defence urged by prisoner Jaggaram; that he has, for some time past, considered himself deeply aggrieved by the conduct of the prosecutor, Nuther Deo, and of the witness No. 22, Gungabishen, is evident, and that they have acted oppressively towards him, cannot be doubted. Nay it is probable, that their influence has coloured the evidence against him in this case. It is to be regretted, that his complaint made in November 1851, did not receive the attention it required. He had charged one party with plundering his property and had alleged misbehaviour of the local police officer. The attachment of the people of these districts to the land is notorious, and great evils have erewhile sprung out of disregard to this feeling. The case under consideration is a clear though minor instance. But after every allowance for excited feelings, roused by oppression and fostered by the delay or seeming delay of justice, the conduct of the prisoner Jaggaram No. 5, is unjustifiable, and I am reluctantly compelled to recommend that he be sentenced to death. As to the other prisoners, Nos. 1, 2, 3, 4, 6, 7, 8, and 9, a severe punishment is necessary by way of example, for their offence is one that demands a vigorous check, and I therefore recommend that they be sentenced to imprisonment for life with hard labor in irons in transportation beyond sea.

A singular feature in this case is that the removal and concealment of the bodies were possible. The murders took place in the morning in the neighbourhood of a considerable village, and yet, not a tittle of evidence as to what occurred in the

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course of the day has been produced. That many persons were cognizant of the facts, and that the bodies were deliberately carried away I have no doubt; but not one solitary witness has dared to come forward. In like manner no one has dared to mention the names of those who accompanied Nuther Deo to Ghagra, and though the fact of his having gone there, with a number of persons is well established by the evidence before this court, it is not noticed, or is suppressed by the police officer, Sewraj darogah, whose conduct in this case has not been satisfactory. The inefficiency of the police and the timidity of the people are herein apparent, and these stand in the relation of cause and effect. If the police could afford protection, men would not fear to give evidence; many faults of which we complain of in this people, are the fruits of social evils that are not beyond control. But so long as the hand of private oppression is stronger than the arm of the law, so long will these faults continue, so long shall we complain of them.

Resolution of the Nizamut Adawlut, No. 1512, *dated the* 22*nd November* 1852.—*(Present: Messrs. Colvin and Mills.)*

The court having attentively considered the proceedings of the trial, do not think that the measure of punishment can be appropriately determined as to the prisoners who may be justly liable to conviction, without ascertaining more accurately than can be done from the present record, whether the party, Gungabishen had or had not been in quiet possession of the village of Ghagra on a temporary lease, (which was afterwards converted into one of perpetuity) for some time before the attack made by Jaggaram and his adherents, or whether Gungabishen was endeavouring, when the bloodshed took place, to enforce on his part, *any new claims of possession* by means of an armed party, headed or brought to his aid by Lal Nuther Deo.

It is a remarkable fact in this case, that the prosecutor, apparently having no concern in the affairs of the village, seems to have gone, as stated in the last paragraph of the deputy commissioner's letter, with a number of armed persons to the support of Gungabishen.

If there were, in fact, preparations on both sides for a violent affray with the view to establish a doubtful possession, yet in contest between the parties the crime of the prisoners would be obviously less serious, than if they had assembled an armed force for open outrage against persons in quiet enjoyment of the rights claimed by them.

It is to be observed that the prisoners Nos. 2 and 3, in their confessions before the principal assistant, dated the 5th May, state themselves to have been wounded, the one with a sword and the other with a mongra in an affray; but no en-

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quiry appears to have been made, as far as can be traced regarding the reality and nature of these alleged wounds.

The enquiry by the deputy commissioner and the magistrate, upon the points above noted, has certainly been defective.

The court therefore think it proper to have the trial re-opened before the deputy commissioner in order that all available information on the above subjects may be called for and considered by him. He will re-assemble the jury, and have fresh evidence on the points indicated duly taken before them. He will on the close of the record of the new evidence, take a fresh defence from the prisoners, and a fresh opinion from the jury, and will then proceed to dispose of the case by a renewed reference or otherwise, as he may consider, with advertence to such opinion and to all the circumstances of the case as developed by the further investigation, to be just and proper.

Reply from the deputy commissioner of Chota Nagpore, to B. J. Colvin, Esq., register of the Sudder Nizamut Adawlut No. 12, *dated the 7th March* 1853.

With reference to the resolution of the Sudder Nizamut Court, under date the 22nd November 1852, I have the honor to re-submit the case in which further sittings were held on the 21st, 22nd and 23rd February 1853.

The points on which the court was pleased to direct further inquiry are these :—

First,—Whether Gungabishen had or had not been in quiet possession of the village of Ghagra on a temporary lease, (which was afterwards converted into one in perpetuity) for some time before the attack made by Jaggaram and his adherents.

Secondly,—Whether Gungabishen was endeavouring when the bloodshed took place, to enforce any new claims of possession by means of an armed party headed or brought to his aid by the party Lal Nuther Deo.

Thirdly,—Respecting the nature and reality of the wounds alleged by the prisoners Nos. 2 and 3, to have been inflicted on them by the prosecutor's party.

As to the first point; several of the original witnesses for the prosecution have now been re-examined, and some new evidence has been taken, and it clearly appears that during the term of the temporary lease, Gungabishen had quiet possession of the village of Ghagra.

As to the second point, that from October 1851, Gungabishen's possession under the lease in perpetuity had been troubled by disputes with Jaggaram, is by the proceedings referred to at the close of the evidence for the defence, in my letter, No. 56, dated 16th October last, and by the further evidence now taken, made sufficiently manifest. Jaggaram had, until recent-

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ly, possession of one kharee (an indefinite measure) of land in Ghagra village. The evidence of Gungabishen himself on this head is as follows :—

By the prisoner Jaggaram.

Q. Had Jaggaram possession of one kharee of land within your lease or not?	*A.* He had not.
Q. Did your under-farmers Mohesh Gwalla and Sewnath Hajam sue Jaggaram in the moonsiff's court at Lohardugga or not?	*A.* Mohesh Gwalla and Sewnath Hajam were my under-farmers, and they did sue him in the Lohardugga moonsiff's court for arrear of rent of four annas of land tilled by him.
Q. For what time did Jaggaram till that land?	*A.* For two or three years.
Q. If under the settlement of Mohesh and Sewnath, Jaggaram had possession of four annas of land, how came you to say that Jaggaram had no land in his possession?	*A.* He held no land from me.
Q. When the under-farmer's tenure expired, did the land remain in Jaggaram's possession?	*A.* Then it came in my possession.
Q. How did it come into your possession?	*A.* The prisoner Jaggaram quitted it voluntarily.
Q. When did the under-farmer's term expire?	*A.* The term was from 1901 to 1905 Sumbut, and then expired.
Q. When Jaggaram's possession ceased, by whom was that land then tilled?	A. That land was then tilled by me.
Q. Has that land any name?	A. I do not know the name of that land.

I have put this evidence verbatim, to show how reluctantly the admission of Jaggaram's possession of one kharee or four annas of land, has been made. The fact is, however, proved by other witnesses, both for the prosecution and defence. This land is now in the possession of Gungabishen, and has most probably been so since October 1851, at which time Jaggaram made complaint about it. The evidence as to the change of possession is conflicting. On one hand it is alleged to have occurred two years back, on the other that Gungabishen's possession was not complete till after the occurrence of the case under trial. But the existence of a prior dispute does not

establish the affirmative of the second point. It is not proved that when the bloodshed took place, Gungabishen was endeavouring to enforce any new claims of possession. That he was supported by an armed force under Lal Nuther Deo, I believe. What his ulterior intentions may have been cannot be ascertained, but I find no reason to suppose, that at the time of Jaggaram's attack, the position of Gungabishen's people was other than defensive. The occurrence took place not on Jaggaram's ground, but at Gungabishen's store to which Jaggaram makes no claim. 1853.

As to the third point. The prisoners Nos. 2 and 3, have not been able to produce any evidence respecting their wounds. Both of them have on their heads marks such as might have been caused by smart blows of a club; and the existence of these marks may be taken for evidence, that the prisoners were wounded as stated by them. I ought to have mentioned this distinctly in my former letter.

The jury on a reconsideration of the whole case have modified their verdict and find the prisoners guilty of culpable homicide.

It has been remarked by the Sudder Court, that if there were in fact preparations on both sides for a violent affray with the view to establish a doubtful possession, yet in contest between the parties, the crime of the prisoners would be obviously less serious than if they had assembled an armed force for open outrage against persons in quiet enjoyment of the rights claimed by them.

That there were preparations on both sides, cannot, I think, be doubted, but I think also that the preparations on one side were aggressive and on the other defensive; the defensive party being on the side of him who had quiet possession. It is, however true, that the preparation for defence would serve to excite aggression, and I suppose that a party who, instead of trusting to the final protection of the law, seeks to maintain his right by show of armed support, is himself a transgressor though he remain passive. Were our institutions perfect, this reasoning would be sound enough as the case stands and among an armed population, there seems to be something of over-refinement in it.

On a careful review of this case, on which, indeed, I had at the first bestowed anxious attention, I believe that I shall be justified in finding the prisoner Jaggaram No. 5, guilty of affray* with aggravated culpable homicide, and the others, prisoners, Nos. 1, 2, 3, 4, 6, 8, and 9, guilty of being concerned in the same. And considering that exemplary punishment is necessary to repress a species of crime, not here uncommon, I would recommend that the prisoner Jaggaram No. 5, be sen-

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tenced to transportation for life with hard labor in irons and that the other prisoners Nos. 1, 2, 3, 4, 6, 8 and 9, be sentenced to imprisonment with hard labor in irons for the term of fourteen years.

The prisoner Jaggaram is apparently between 50 and 60 years of age. His case excites compassion, but the offence must, if possible, be checked. I have now before me a somewhat similar affair in which three persons were killed. To unravel the frauds that are practised on the aboriginal possessors of lands in these districts, is extremely difficult and the remedies accessible to the injured parties are complex. Hence it is, that in endeavouring to protect themselves such affrays take place. All that the criminal law can do is to repress by severity; though of all remedies this is perhaps the least effective.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and A. J. M. Mills.)—We concur generally with the view which the deputy commissioner has taken upon the result of the fresh proceedings on this case, though we are not entirely satisfied that the dispossession of Jaggaram from the lands, which he had held for maintenance, had been completed, and that that land had passed for any time into the undisturbed occupancy of Gungabishen.

There is no doubt, as stated by the deputy commissioner, that Jaggaram had been very unjustly and oppressively dealt with.

Under all the circumstances of the case, we convict the prisoners as principals, and accomplices in an affray attended with aggravated culpable homicide, and sentence Jaggaram, stated to be between 50 or 60 years of age, to imprisonment with labor and irons for 14 years; and the other prisoners to a like imprisonment for 10 years each

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

v.

JUGBUNDHOO CHUCKERBUTTY.

BHAUGULPORE.

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Case of JUGBUNDHOO CHUCKERBUTTY.

The sentence of the sessions judge passed upon the prisoner convicted of forgery and embezzlement was affirmed on appeal.

CRIME CHARGED.—1st count, forgery in the following instances.

First instance.—Fraudulently altering the amount of a bill, dated 9th March 1852, subsequently to its being signed by Mr. G. G. Balfour, and other members of the Ferry Fund Committee, and previously to its being sent for audit. The correct amount of the said bill, being rupees 904-1-10, which the prisoner fraudulently altered to rupees 994-1-10.

Second instance.—Fraudulently erasing and altering the amount of an item charged in a bill, dated 9th March 1852, subsequently to its being signed by Mr. G. G. Balfour, and other members of the Ferry Fund Committee, and previously to its being sent for audit. The correct amount of the item of the said bill being rupees 394-1-3, which the prisoner fraudulently erased and altered to rupees 754-1-3.

Third instance.—Fraudulently adding to the above bill another item for rupees 975, for two drain bridges, subsequently to the said bill being signed by Mr. G. G. Balfour, and other members of the Ferry Fund Committee, and previously to its being sent for audit.

Fourth instance.—Forging the name of Mr. G. Thomas, to two receipts, each for Company's rupees 1,065.

Fifth instance.—Forging the name of Ram Tuhul Singh, to a receipt for rupees 98, for him.

Sixth instance.—Forging the name of Lootun Singh, to a receipt for Company's rupees 52, for *surkee.*

2nd count, uttering the above four forged receipts, knowing them to have been forged.

3rd count, embezzlement of rupees 3,579-14-5, *viz.*, rupees 839-13-6, from the Charity Hospital, and rupees 2,740-0-11, from the Ferry Fund of Monghyr, in the following instances:—

From the Charity Hospital.

First instance.—For having embezzled the sum of rupees 67-13-6, which sum he received from the Government treasury, in obedience to the magistrate's *purwannah*, dated 23rd April 1850, for the purchase of sundries for the Charity Hospital, ... Rupees 67 13 6

Second instance.—For having embezzled the sum of rupees 120, which sum he received from the

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Government treasury, in obedience to the magistrate's *perwannah*, dated 15th May 1850, for the purpose of purchasing surgical instruments for the Charity Hospital, ...	120	0	0
Third instance.—For having embezzled the sum of rupees 150, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 16th September 1850, for the purpose of purchasing surgical instruments for the Charity Hospital, ...	150	0	0
Fourth instance.—For having embezzled the sum of rupees 200, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 18th April 1851, for the purchase of sundries for the Charity Hospital, ..	200	0	0
Fifth instance.—For having embezzled the sum of rupees 152, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 30th October 1851, for the purchase of sundries for the Charity Hospital, ..	152	0	0
Sixth instance.—For having embezzled the sum of rupees 150, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 6th April 1852, to be expended in repairing shops, ...	150	0	0
Total, Company's Rupees,	839	13	6

From the Ferry Fund.

Seventh instance.—For having embezzled the sum of rupees 48, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 1st June 1850, for the purchase of sundries for bridges on the Belleah road,	48	0	0
Eighth instance.—For having embezzled the sum of rupees 265, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 6th July 1850, for the purchase of sundries for bridges on the Belleah road,	265	0	0
Ninth instance.—For having embezzled the sum of rupees 318-16-6, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 6th August 1850, for the purpose of purchasing iron works for the bridges on the Belleah road, ...	318	10	6

Tenth instance.—For having embezzled the sum of rupees 288, which sum he received from the

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Government treasury, in obedience to the magistrate's *perwannah*, dated 16th August 1850, for the purpose of purchasing water pipes for bridges on the Belleah road, ... 288 0 0

Eleventh instance.—For having embezzled the sum of rupees 65, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 18th September 1850, for the purpose of purchasing iron works for Urjushgunge road, ... 65 0

Twelfth instance.—For having embezzled the sum of rupees 200, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 9th November 1850, for sundries for the Belleah road, ... 200 0 0

Thirteenth instance.—For having embezzled the sum of rupees 100, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 22nd February 1851, for Committee purposes, ... 100 0 0

Fourteenth instance.—For having embezzled the sum of rupees 550, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 22nd February 1851, for Committee purposes, ... 550 0 0

Fifteenth instance.—For having embezzled the sum of rupees 275-2-5, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 15th August 1851, for labor of coolies on the Belleah road, ... 275

Sixteenth instance.—For having embezzled the sum of rupees 630-4-0, which sum he received from the Government treasury, in obedience to the magistrate's *perwannah*, dated 12th July 1851, for Belleah road purposes, ... 630 4 0

Total, Company's Rupees . 2,740 0 11

4th count, theft of the above-mentioned sum of rupees 3,579-14-5, in the above instances.

5th count, fraud in the above facts.

6th count, fraudulently altering the account books of the Ferry Fund Committee, and of the Charity Hospital of Monghyr with intent to conceal his embezzlements.

CRIME ESTABLISHED.—1st, 2nd, 3rd, 5th and 6th counts.

Committing Officer—Mr. A. Hope, officiating magistrate of Monghyr.

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Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 24th January 1853.

Remarks by the sessions judge.—The prisoner pleads not guilty.

This case has been tried before a jury.*

The culprit was head writer of the magistrate's office; the crimes charged were forgery, first, in altering bills sent for audit by the Ferry Fund Committee, subsequent to signature and prior to audit so as to procure an excess audit and consequent excess amount at credit, and then in uttering forged receipts purporting to be those of Mr. G. Thomas and others, employed on works carried on by the Ferry Fund Committee, so as to appropriate such excess credits to his own use and purposes; and embezzlement in having procured the passing of sixteen perwannahs signed by the magistrate and countersigned by the Sherishtadar or other omlah, by which, order was made to the treasurer to pay the prisoner sums aggregating 3,579-14-5, the whole of which was paid to the prisoner, and for not one rupee of which he is able to account otherwise than by his bare assertion, that the money was paid by him to Mr. Balfour, the magistrate.

There are other charges in the calendar, all of which with the exception of the 4th count, "theft of the above-mentioned sum of rupees 3,579-14-5," have been fully and clearly proved against the prisoner.

There are in all six counts, the first is forgery in six separate instances. The first three of which relate to two audited bills numbered one and two, and dated the 9th March 1852, filed in the record. The alterations and additions to which have been proved; first by the erasures themselves, which are evident on holding the paper to the light; secondly, by comparing the items with the accounts, from which it appears in evidence that they were prepared; thirdly, by the admission of prisoner himself, who says, he made the alterations and additions by Mr. Balfour's orders, which Mr. Balfour on his oath denies; fourthly, by the after fact of forgery as per fourth instance of the 1st count, prisoner having in this instance attempted to appropriate exactly the amounts by which part of the bills in question had been increased. The first bill was doubtless originally for rupees 904-1-10, it was altered to rupees 994-1-10, the second bill had an extra item charged in it of rupees 975. The forged receipts of Mr. Thomas were for exactly these two amounts, *viz.*, rupees 90 = 975 rupees 1,065, each amount being separately mentioned in the receipts, Nos. 3 and 4, marked A and B in red ink.

* Bahoo Joygopaul Mitter, Bengallee Moonshee, Zemindar; Gholam Oustgeer, Zemindar; Gooroopershad, mooktearkar.

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The fourth instance of the 1st count is for the forgery of Mr. Thomas's name, to two receipts for rupees 1,065. Mr. Thomas, a most respectable tradesman of this place, swears positively to the signature on these papers not being in his hand-writing or written with his consent and knowledge, as also to there being no sum or sums of any sort due to him from the magistrate's or Ferry Fund department.

The proof of their having been written by prisoner is direct evidence, of their having been in his possession, and of his attempt to cash them (which in fact, led to the discovery of the crime, as will be seen in Mr. Thomas's evidence of the 21st instant,) and the seizure in his house of several scraps of paper, on which he, the prisoner, had been practising the writing and signature afterwards produced in the receipts themselves. See the packet marked C in red ink, these were found among other papers in prisoner's house after his apprehension, and filed with the record by the officiating magistrate, Mr. Hope.

The 5th and 6th counts, are for forging the names of Ramtubul and Lohtun to two receipts for rupees 98 and 52 respectively; Ramtubal and Lohtun are found on enquiry not to exist. The body of these receipts is in the acknowledged hand writing of prisoner. The parties whose names are forged to them, do not exist. The evidence of witnesses, Nos. 5, 6, 7 and 8, as to their not residing in the village prisoner points out, was not repeated in this Court as being irrelevant. Prisoner has failed to produce them, and this, in connection with the evidently erased and altered memorandum on which the money was paid to prisoner, and the other facts of the case, is sufficient proof of its correctness.

The 2nd count is for uttering the above four forged receipts, which is clearly and circumstantially proved by witnesses Nos. 3 and 4, the treasurer of the magistrate's office and his naib, who produce prisoner's receipts and swear to having paid the money into his hands.

The 3rd count is for embezzlement of rupees 3,579-14-5, as detailed in sixteen instances, each of which has been proved by the *perwannah* for payment, and receipt of the prisoner for the sum specified, as also the evidence of witnesses, Nos. 3, 4, 10 and 11.

There is no evidence on the 4th count.

The 5th count charges fraud in the above facts, which is fully borne out by the evidence.

The 6th count, is for altering the books of the Ferry Fund, and Charity Hospital, which is proved by the books themselves, and the evidence of Mr. Balfour and others, concerning them.

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Prisoners written defence, for the preparation of which every opportunity was given him, is nearly a repetition of that made before the magistrate, most of the facts are not denied, but the blame thrown either on the omlah or the magistrate, the forged receipts are stated to have been given to him (prisoner) by Mr. Balfour, prior to his departure from Monghyr for Darjeeling in March 1852, while one of the scraps of paper found in prisoner's house, on which he had evidently been practising both the wording and writing of the forged receipts produced in Court, is an old torn envelope addressed to Mr. Hope, and signed by me, as judge of Bhaugulpore. Mr. Hope having succeeded Mr. Balfour, and I not having assumed charge of the judge's office till after Mr. Balfour's departure, there is no need, however, to enter further on the utter incredibility of the unsupported assertion of a desperate criminal; nothing that he has said throws the remotest suspicion on Mr. Balfour, and the blame must rest entirely with the prisoner, against whom a most aggravated case of forgery and embezzlement has been fully made good.

There has been evidently great carelessness in the office where this fraud has been committed, and a wrong system as to the accounts. The English accountant having been able, as long as assests existed, to draw for what sums he wished on any frivolous pretext, the magistrate signing the order written in the Persian character, which he probably had not time to decipher, and the native establishment backing up and obeying this written order under the idea, evidently encouraged by the accountant (prisoner,) that it resulted from English conversation which took place in open Court between him and the magistrate, there being no check account in the native language, which must at once have unmasked the fraud or eventually committed the Native establishment as participating therein. There are facts connected with this case which should be here noted. The statements appended to the record, showing the sums which ought to have been paid for works undertaken by the Ferry Fund Committee, and those actually so paid, are, as far as they go, clear and satisfactory, but there is a discrepancy of rupees 60, which cannot be accounted for.

The *perwannah nuvees*, Inayetoollah, by whom all, or most of the *perwannahs* adduced in evidence, were written, died in 1851.

The care and tact evinced in the preparation of this case, do great credit to the officiating magistrate, Mr. Hope.

The Jury return a verdict of guilty on all the charges, with the exception of 4th count in which finding I concur.

I see no extenuating circumstances in this case to lessen the punishment of the prisoner, whom I convict of forgery and

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embezzlement, and sentence to (7) seven years' imprisonment with labor in irons, and to pay a fine of rupees 3,579-14-5, as shown in the statement above.

Remarks by the Nizamut Adawlut.-- (Present : Sir R. Barlow, Bart.)—The prisoner, in answer to the several charges brought against him, defends himself on the plea, that he acted under the orders of Mr. G. G. Balfour, the magistrate, who directed him to alter the amounts in the bills referred to in the 1st count, and that he paid sums drawn from the Charity Hospital and Ferry Funds to the same magistrate and to those to whom the several amounts were due.

The erasure in the bill for rupees 994, is quite apparent, and the alteration of the figures and addition of items entered in that for rupees 2,460-2, are proved by reference to the prisoner's answer. It has been shown, what were the actual figures in the original bills ; the prisoner's admissions on these points are, however, sufficient evidence against him.

The receipts for rupees 1,065, purporting to bear the signature of G. Thomas, are alleged by the prisoner to have been given to him by the magistrate. The prisoner denies, that he wrote them, and says he was ordered by the magistrate to draw the money after audit.

The amounts covered by the receipts of Ramtubul Singh and Lohtun Singh, the prisoner pleads were paid to them ; but on enquiry at the village at which they are said to have resided, no such persons were forthcoming, and the villagers deposed, that no persons of those names belonged to their village.

He acknowledges receipts of the two sums, rupees 839-13-6, drawn from the Charity Hospital fund, and rupees 2,760-11, from the Ferry Fund. The former he pleads, was paid to the magistrate, the latter, to the parties named in the *perwannahs*, whose receipts were in the office ; he is unable to say, what has become of them, as the office papers were examined in his absence. The prisoner, however, has named none of the recipients of the money in his defence ; some of them at least should have been brought forward, and no doubt, would have been cited, if there were any truth in the allegations which he has made.

The prisoner has appealed ; he merely states that the magistrate in his deposition admits, that his orders were given in English ; the charges of forgery and embezzlement cannot therefore be valid against him, and refers to his English written defence in the sessions court.

The only defence set up is, that the prisoner acted under orders of the magistrate ; this no doubt, is true to the extent, that the various sums set forth in the calendar were drawn by

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him under authority of *perwannahs* signed by that officer, but in the misapplication of the Charity and Ferry Funds, the magistrate took no part whatever. The monies were paid to the prisoner, who appropirated them to his own purposes; it is for him under the admissions he has made to prove his innocence. The forged receipts alleged to have been signed "G. Thomas," and the scraps of paper found in the prisoner's house, on which it must be presumed, he had been practising to imitate that signature, are very strong presumptive proof against him. The *onus probandi*, under the circumstances of this case rests with him, his defence and the imputations he throws on the magistrate, are altogether unsupported.

I convict the prisoner of forgery and of embezzlement in the instances enumerated, and confirm the session judge's sentence.

PRESENT:

DUNBAR, Esq., *Judge*

GOVERNMENT

KALEEJEWUN MUSTOFEE (No. 1,) AND OOMANATH MUSTOFEE (No. 2.)

DINAGEPORE. 1853. April 7. Case of KALEE JEWUN MUSTOFEE and another.

The prisoners were convicted of uttering forged documents by the sessions judge, whose conviction and sentence were confirmed in appeal, as the evidence was held fully to establish the crime charged.

CRIME CHARGED.—1st count, forgery in having altered the date both in writing and figures of three *dakhilas*, dated the 5th Poos 1256, 30th Bysakh 1256, and 13th Phalgoon 1256, respectively, and 2nd count, uttering the above three *dakhilas*, knowing them to be altered by forgery.

CRIMED ESTABLISHED.—Uttering three *dakhilas*, knowing them to be altered by forgery.

Committing Officer—Mr. E. S Pearson, Magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 26th October 1852.

Remarks by the session judge.—The prisoners committed by Mr. J. Reiley, principal sudder ameen, were defendants in a suit for rupees 1,376 odd, arrears of rent for 1256. They pleaded payment of rupees 3,372-8, out of rupees 3,473-13-9, leaving a balance of only rupees 101-5-9. Some twenty *dakhilas* filed by the prisoners tallied with the sums credited by the plaintiff for 1,256, but three for rupees 401, 799 and 75, aggregating rupees 1,275 tallied with the credits, *chellans* and documents of 1,253, both as to date and amount. It was clearly proved by the *zemindar's* accounts and the evidence of his collecting omlah that no such payments had been made for 1256, and the figures in two of the *dakhilas* had evidently been

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altered from 1253 to 1256. There was no apparent alteration or erasure in the *dakhila* for rupees 799; but the person by whom it was said to have been given, declared that it was fictitious; and I think it not improbable, that the alterations in the other *dakhilas* (from 1253 to 1256) were made after selection and specification in the defendant's answer, and that some mishap in altering the genuine one for rupees 799, made it necessary to substitute the one filed. The futwa of the law officer convicted the prisoners on the 2nd count, in which I concurred. The case is very minutely detailed in the principal sudder ameen's proceeding.

Sentence passed by the lower Court.—Each, three (3) years' imprisonment, without irons, and a fine of rupees 1,000 or labor.

Remarks by the Nizamut Adawlut.—(Present Mr. J. Dunbar).—It was contended by the vakeel for the prisoners, that the evidence is insufficient to afford unquestionable proof, that the *dakhilas* are forged documents, and that the prisoners should not be punished on mere suspicion. The witnesses for the prosecution swear positively, that the aggregate amount of rent covered by the three *dakhilas* was not paid in, on account of 1256. On the other hand, evidence is adduced on behalf of the prisoners, to prove, that the money was so paid. This evidence, however, is in my opinion, utterly unworthy of credit. The fact of the *dakhilas* now put forward for 1256, corresponding exactly in amount with credits, *chellans* and documents of 1253, the marks of alteration visible on two of the *dakhilas*, and the inability of the prisoners to produce the *dakhilas* of 1253, together with a consideration of all the circumstances detailed in the proceeding of the principal sudder ameen, which was read out, and commented on in presence of the vakeels, afford sufficient grounds for holding the *dakhilas* to be forgeries, put forward in court with the deliberate intention of defrauding the plaintiff in the civil suit, of his just dues. I see no reason to interfere with the order of the sessions judge.

PRESENT:

J. DUNBAR, Esq., *Judge.*

RAMGOPAL UDHIKARY

versus

CHUCKOO BAOREE.

WEST BURDWAN.

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The prisoner was convicted of burglary with intent to steal by the sessions judge. This finding was annulled by the Nizamut Adawlut, and the prisoner convicted of attempting to commit burglary, as the excavation had not been completed.

CRIME CHARGED.—Burglary with intent to steal in the house of prosecutor, on the night of 5th September 1852, corresponding with 22nd Bhadoon 1259 B. S.

CRIME ESTABLISHED.—Burglary with intent to steal in the house of prosecutor.

Committing Officer--Mr. W. J. Longmore, officiating joint magistrate of West Burdwan.

Tried before Mr. P. Tayler, sessions judge of West Burdwan, on the 6th January 1853.

Remarks by the sessions judge.—Ram Baoree, the chowkeedar, witness No. 1, who is a connection of this prisoner, saw, over a portion of the mud wall of the prosecutor's *khamar*, or compound, which has been melted down by the rain, five persons making a hole in the wall of the dwelling house, and with his *lattee* in his hand, went to prevent them.

The moon was up, but obscured by thick clouds, so that he could not see who the men were.—Four of them, on perceiving him, ran away, but the fifth (prisoner) attacked him with a stick, on which the witness struck him several blows with his *lattee*, one of which, on the head, knocked him down. Witness then called the prosecutor, who came up, and the prisoner was removed to the door of the dwelling house, where he was placed in durance. Shortly afterwards the witnesses for the prosecution, named in the circumstantial evidence column of the calendar, came up, saw the prisoner lying bound and bleeding at the prosecutor's door, and heard the witness, No. 1, say that he was Chuckoo Baoree, without mentioning that he was a connection of his own. The prosecutor did not know the prisoner, but such of the witnesses as were chowkeedars, did. No excuse was made by the prisoner at that time. There was an incomplete excavation in the wall of the house, which had been stopped by a stone on the inside.

The *sooruthal* and apprehension were duly substantiated by the witnesses named in the proper columns.

The prisoner stated at the thannah, that he was on his way to Media, a village on the other side of Begooah (that of the prosecutor) with the intention of visiting a relation, named Harroo Baoree, when witness, No. 1, knocked him down and made him prisoner without cause.

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Begooah is situated between Mediara, where the prisoner resides, and Media, but the straight road passes under the village and not through it.

To the officiating joint magistrate he said, that he had been on his way to Media to buy cloth, when only two *dunds* of the night remained, *i. e.*, at about four in the morning; that the chowkeedar, witness, No. 1, had seized him in consequence of ancient enmity, arising out of a marriage between his sister and the said witness's nephew, whose name he could not recollect, and that the chowkeedar had robbed him of one rupee worth of pice.

Before the sessions court, the prisoner stated, that he had been seized and robbed at seven in the morning; that he had been at home all night; that the name of the chowkeedar's nephew was Putchun; that he had taken away his sister from that individual and given her to another man, in left-handed marriage, because he ill used her, and that the chowkeedar hated him in consequence.

When the witnesses for both prosecution and defence were questioned, in regard to the declared enmity, they one and all said that the quarrel had occurred many years ago; that the prisoner and witness, No. 1, lived apart; and that they had no very distinct knowledge of what had occurred. The chowkeedar himself said, that the matter had taken place before he reached years of discretion; and that, in consequence of the darkness of the night, and the silence of the prisoner, he did not find out who he was, until he had knocked him down and examined him closely.

The evidence adduced by prisoner in his defence was quite futile.

The law officer convicted him of the crime charged, on violent presumption, and declared him liable to *tazeer*, or discretionary punishment. I fully agreed in this finding, and he was therefore, convicted and sentenced, as noted.

The prisoner was sentenced to two years' imprisonment with labor and irons, for cattle stealing on the 26th January 1850, and had not been a year out of jail, when the present crime was committed.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor in irons, and one year more in lieu of stripes, also with labor in irons, total four years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—There must be an entering as well as a breaking to constitute burglary, and as it is admitted that the excavation was incomplete, the conviction must be for attemping to commit burglary with intent to steal. The evidence is quite

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sufficient to support such a conviction. With the sentence passed by the sessions judge, I see no reason to interfere. The attempt to commit burglary is punishable under the same law, and to the same extent as burglary itself, and it is in evidence that the prisoner is an old offender.

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT

v.

TITYE (No. 14), NUJJOO (No. 15), SHEIKH SUDDUN (No. 16), MOONGAYE (No. 17), KOOTOOBOODEEN (No. 18), AND BABUROOLLAH (No. 19.)

BACKERGUNGE.

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There being ample evidence against the prisoners, irrespective of that of two witnesses whose motives were impugned, the appeal was rejected.

CRIME CHARGED.—1st count, wilful murder of Panjoo Khan; 2nd count, riot attended with the culpable homicide of Panjoo Khan, and the wounding of Nehal Khan and Ubbas Khan, and the illegal duress of the latter.

CRIME ESTABLISHED.—Riot attended with the culpable homicide of Panjoo Khan, and the wounding of Nehal Khan, and binding Ubbas Khan with a string and detaining him in confinement.

Committing Officer,—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 19th October 1852.

Remarks by the officiating sessions judge.—The particulars of this case as given in my remarks on the original trial are herewith submitted.

Statement No. 6, of the monthly returns for April 1852. case No. 1, Kaloo Jemadar and others*.

The Government was prosecutor in this case. The prisoners denied the charges on which they were arraigned, both in this court and before the magistrate and in the mofussil, and say that they were attacked by certain of the present witnesses, who were sent in by the darogah as prisoners. Witness, No. 1, Abbas Khan, states, that on the 22nd Aghun last, he and his father, Nehal Khan, and his father's wife Agurja and his brother Panjoo Khan, set out about 8 in the morning from the house of Maneek Akhoond, with whom they were then living to see Rumzan Khan, the uncle of witness who was sick in mouzah Hubeetpore; that when they came to a *baree* which had

* Sentence passed on these presoners by the lower court, was confirmed by Sir R. Barlow, on the 31st July 1852; *see* Nizamut Reports for 1852, page 157.

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formerly been let to Nehal Khan, and under-let by him to one Oomur Khan, prisoner, No. 1, and others, ryots of Merza Mehadee, amounting fifty or sixty men attacked them; that prisoner No. 1, inflicted two wounds on the thighs of Panjoo Khan with a *sulfee*, and prisoner No. 2, wounded Nehal Khan on the thigh with a dart, from the effects of which he became senseless; that witness then called for assistance, when the prisoners seized and wounded him and beat him until he was senseless, that the darogah came that night and commenced his enquiry on the morning following; that the prisoners having killed Panjoo Khan, wounded Nehal Khan, and beaten witness, went away.

The cause of quarrel this witness states, to be a dispute for a certain piece of land, between Merza Mehadee and Merza Jaffer; that in the past year his (witness's) brother, Panjoo Khan, deceased, and his uncle, Ukbar, took service with Merza Jaffer, and on that account Merza Mehadee's men got up a complaint in the fouzdaree against them and they were imprisoned, and whilst in jail their house was plundered and burnt by Merza Mehadee's men, on which account they afterwards went to live elsewhere; that on the day of the occurrence they were going peaceably to see their relative, Rumzan, who was sick, when the prisoners attacked them as above stated. This witness recognizes and identifies all the prisoners.

Witness No. 2, Nehal Khan, the father of the last witness, deposes to the same effect, and witness No. 3, Agurja, the wife of the last witness, the same likewise.

Witness No. 4, Nyamoodeen states, that on the 22nd Aghun, about 8 in the morning, he saw from his house which was very near the scene of action, witness No. 2, Nehal Khan, with a stick in his hand, Panjoo Khan deceased, armed with a large *dao* and Ubbass Khan armed with a *dao* also, and Chuttoo Khan and Musst. Agurja unarmed came together to the *baree* which had been let to Nehal Khan, and on which land prisoner No. 6, Hubeeboollah, prisoner, No. 7, Meheroollah, prisoner, No. 5, Usgar, had now built a house; that shortly afterwards he heard a noise there and going to the spot, heard Panjoo Khan and witness No. 1, Ubbass, asking prisoner No. 6, why he had put up a house in their *baree*. Hubeeboollah and the others said, what is it to you, we have a lease from the auction-purchaser, and then seeing *daos* in their hands, he called to Kulloo jemadar, when about ten men armed with *sulfees*, darts, shields and clubs, came forward and began talking, and then fighting, and hearing that Panjoo Khan was killed, prisoner No. 1, Kulloo jemadar and his party ran away. Going up, saw that Panjoo had a wound on each thigh, two wounds upon his head, and one upon his hip and was dying.

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That Nehal Khan had two wounds inflicted by a *sulfee* on the right and left thigh, and that Ubbas Khan was bound. Witness then came away.

The cause of quarrel was, witness No. 2, Nehal Khan, having been turned out of this *baree*, which he had formerly leased by the auction-purchaser, Obhaichurn Banerjee, he having got up a complaint against him and others, charging them with intending to commit a breach of the peace, on which charge they were sent to jail, and whilst there this dispossession was effected, and prisoner No. 1, Kulloo jemadar, and prisoner No. 6, Hubeeboollah, and prisoner No. 7, Meheroollah, and prisoner No 5, Usgar, obtained pottahs for the land, since which time, and on that account there had been ill-feeling between the witnesses Nos. 1, 2, 3 and 4, and the prisoners. The witness recognized and identified all the prisoners. The bulk of the evidence corroborates this story which is no doubt the truth The witnesses Nos 1, 2, 3 and 4, had no reason to go to Hubeeboollah's *baree* situated on land which witness No. 2 had formerly held, and from which he had been lately ejected. It was out of the way to Rumzan's house, and if they had been going peaceably to see a sick man, they would not have been armed with *daos*. Their object in going was, I imagine, to regain possession of the land if they could peaceably, if not forcibly, as they had been themselves dispossessed; and the presence of the woman shows, that they expected little or no resistance, and to be able to establish themselves at once on their old premises. In this they were disappointed and the result has been given above.

The uncovenanted assistant surgeon deposes that he found a punctured wound on the inside of the left thigh of Panjoo Khan, which divided the femoral artery and must have caused speedy death by excessive hæmorrhage, and two wounds on the head, which though severe, would not have caused death. That witness No. 2, Nehal Khan, had two punctured wounds on the inside of the left thigh, each wound three inches long, very deep, and of a dangerous character.

The prisoners now brought up denied the charges on which they were arraigned, and said that they were accused only through the enmity of prosecutor. No. 14, cited witnesses to prove, that he was sick at the time of occurrence and the rest relied upon *alibis*; but nothing satisfactory was elicited in their favor. They were clearly named and recognized by numerous eye-witnesses as having been present and taking an active part in the riot in which Panjoo Khan was killed and Nehal Khan and Ubbass Khan wounded. I therefore concurred with the jury in convicting the prisoners, and sentenced them as shewn.

Sentence passed by the lower court.—Each three (3) years' imprisonment without irons, and a fine of rupees 50, or labor. 1853.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow).—The prisoners are charged with riot, attended with culpable homicide and wounding. Others of the same party were convicted previously. The prisoners were only recently apprehended. But they were named at the original trial, and have now been recognized by several eye-witnesses as having taken an active part. The prisoners all plead *alibi*. The case was remanded for investigation into the truth of the defence set up by the prisoners Titye and Moongaye, that two of the witnesses Nehal and Ubbass, had been imprisoned for three months on charges brought against them by the prisoners. It appears from the return made by the magistrate, that on the complaint of Titye, Nehal and Ubbass were put into jail for that period by the deputy magistrate for assembling men with intention to commit some violence and oppression. Moongaye was in no way whatever connected with that case.

April 7.

Case of TITYE and others.

Independent of the witnesses, Nehal and Ubbass, numerous others have named and recognized Titye, so that there is ample evidence for his conviction, as well as the conviction of the remaining prisoners, irrespective of any evidence that may have been given by Nehal and Ubbass. The sessions judge and jury find the prisoners guilty. I see no reason to discredit the evidence for the prosecution; that adduced by the prisoners is very unsatisfactory and insufficient for their acquittal. I confirm the sessions judge's sentence.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

LUKHUN AND GOVERNMENT

versus

DOWLUT SINGH (No. 10), AND HURREEDOSS BOSE (No. 11.)

MOORSHEDABAD.

1853.

April 8.

Case of DOWLUT SING and HURREE DOSS BOSE.

The appeal of the prisoners convicted and sentenced by the sessions judge for dacoity was rejected.

CRIME CHARGED.—Attempt at dacoitee in the house of the prosecutor, LukhunShahoo, in which attempt, Ramtonoo Shahoo, Motee Mundul and Kesub Shahoo were wounded by the dacoits.

CRIME ESTABLISHED.—Attempt at dacoitee with wounding.

Committing Officer,—Mr C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J Money, sessions judge of Moorshedabad, on the 7th January 1853.

Remarks by the sessions judge.—From the evidence adduced in this case it appeared, that on the night of the 16th November last, the prisoners with several others armed with *lattees* and muskets and carrying torches, proceeded to the prosecutor's house for the purpose of attacking it, but on the prosecutor's calling out, his son, Ramissur and other relatives, opposed the dacoits with *lattees* in their hands and in the mean time the villagers joined them. The dacoits wounded one Mooreeram and two other villagers, and the villagers wounded the prisoner, Dowlut Singh. The dacoits then decamped with their wounded comrade, who was taken up by the chowkeedars the following morning in a field. The prisoners denied the charge. Dowlut Singh in his defence stated that on his way in quest of employment he was attacked by highway robbers, and Hurry Doss Bose stated, that while on his way in search of his brother, he saw Dowlut Singh lying wounded, and heard from him what had happened, and as he was returning home he was taken up No reliance could be placed upon their statements. Hurry Doss Bose was on a former occasion committed to the sessions court for trial, but acquitted for want of proof. It was improbable that he would have gone to Dowlut Singh or sat near him had he not been intimate with him. From the evidence it appeared, that the prisoners attempted to attack the house of the prosecutor, and were recognized by some of the witnesses on the spot, and that Dowlut Singh was immediately wounded, and as the house of the prisoner, Hurry Doss Bose, was at a distance off, there appeared to be no reason why, while on his way to Jungypore, he should not have sat by the prisoner, Dowlut Sing, near the spot where the dacoity was attempted, and in which attempt he was wounded.

1853.

April 8.

Case of DOWLUT SING and HURREE DOSS BOSE.

Although Dowlut Sing does not appear to have been apprehended in this district, I believe him to be the principal, and I think he is a professional dacoit, as well as the prisoner, Hurry Doss Bose. I convicted the prisoners of attempt to commit dacoity with wounding, and sentenced them as stated in the proper columns.

Sentence passed by the lower court.—Fourteen (14) years' imprisonment with labor and irons in banishment, and two (2) years in lieu of ratan.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow).—The prosecutor's house was attacked about 10 o'clock, when his sons and his brother came to his assistance, and with the villagers drove off the dacoits to a tank where a struggle took place. One of the dacoits was severely wounded, and, as the villagers were bringing him homewards, his accomplices carried him off. Next morning Bhurut and Juggernath, chowkeedars, saw two persons at the foot of a *peepul* tree, one No. 16 apparently weak and sick. Bhurut asked what ailed him, and was answered by No. 17, that he had the cholera. Bhurut was not satisfied, stripped off his cloth and found him wounded, No. 17, on this ran off, was pursued and seized by the two chowkeedars. No. 16, said, robbers had plundered him and No. 17 had gone to procure the means of removing him. In the mofussil they said they had been to Beerbhoom for service. No. 17 said, he was on his way to Ballasore, and saw No. 16 wounded on the ground *en route*. The prosecutor and four others, who came to his defence, swear very positively to the recognition of the prisoners. I do not place much reliance on the evidence to the recognition. But the fact of the prisoner No. 16, having been found within half *coss* of the prosecutor's house the morning following the attack, severely wounded, and the very plain story told by those, who apprehended him with the prisoner No. 17, whose accounts of himself before the police, the magistrate and sessions judge vary on material points, as well as the discrepancies apparent in the statements of the two prisoners who evidently were associates, not, as No. 17 would have it supposed, strangers to each other. The fact also of No. 17, endeavouring to escape from the chowkeedars who had examined him, form strong grounds for presuming that the prisoners were of the party who attempted to commit the dacoity. I see no reason to doubt the propriety and justice of the conviction and sentence.

PRESENT:
W. B JACKSON, ESQ., *Judge.*

SREEKISTO PODDAR AND GOVERNMENT
versus
GUNGABISHEN SOOKUL.

MOORSHEDABAD.

1853.

April 8.
Case of GUNGA BISHEN SOOKUL.
Conviction and sentence of prisoner for highway robbery affirmed.

CRIME CHARGED.—Having on the day of the 12th October 1849, correspoding with 27th Assin 1256, assaulted the prosecutor on the highway, and with having then and there violently and feloniously taken and carried away from the person of the prosecutor, a bag containing rupees 600.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer—Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 10th January 1853.

Remarks by the sessions judge.—It appears from the circumstances of the case, that the prisoner was employed by the prosecutor for three months, on the security of one Bydnath Misser. On the 12th of October 1849, at 10 o'clock in the morning, the prisoner had charge of rupees 600, in a bag, to pay into the *kootee* of Hurruckchand Baboo, and was accompanied by the prosecutor, his master. On their way, one Gunness Paureh joined him; meanwhile the prisoner made over the money to the prosecutor, his master, and went aside to relieve nature, and a little after returned, and they all proceeded on together till they arrived at a place called Peertullah, when Gunness Paureh, struck the prosecutor on the leg with a *lattee* and felled him to the ground. The prisoner attempted to snatch the money from him, but not succeeding, Gunness again struck the prosecutor with a *lattee*, when he let go the money bag with which the prisoner absconded He made his escape to Lucknow, and was apprehended after a lapse of two years by the political resident at Lucknow. The prisoner denied the charge, and pleaded in his defence, that he has never been in this country, or in the service of the prosecutor; but from the evidence of Jhubboo, Bunnoo and Bydnath Misser, who was an inhabitant of Lucknow, and knew the prisoner from his boyhood, as well as Radhamohun, the master of the prisoner Gunness, it was proved that the prisoner was in the prosecutor's service, and after the commission of the crime had made his escape to Lucknow. The law officer convicted the prisoner on violent presumption of assaulting the prosecutor in the highway and robbing him of the money, and declared him liable to *akoobut.* I concurred in the finding, and sentenced him as stated.

Sentence passed by the lower court—Ten (10) years' imprisonment, with labor and irons, in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The prisoner Gungabishen, with the help of another, knocked down his master, the prosecutor, on the high road, and robbed him of rupees 600; he escaped and was caught afterwards in Lucknow; the prosecutor and others recognized him as the offender, and I see no reason to interfere with the sentence passed on him.

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April 8.

Case of GUNGA BISHEN SOOKUL.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

TAJEE SHEIKH AND GOVERNMENT, (CO-PROSECUTORS) *versus*

ISMAEL SHEIKH (No. 13), BHEEKOO SIRCAR (No. 14, APPELLANT), KHOODEE SHEIKH (No. 15, APPELLANT), AND JUBBANEE SHEIKH (No. 16).

MOORSHEDABAD.

1853.

April 8.

Case of BHEEKOO SIRKAR and another.

Convict and sentence affirmed

CRIME CHARGED.—1st count, culpable homicide of the prosecutor's (Tajee Sheik's) father, named Allee Chowkeedar, who was beaten on the 15th October 1852, corresponding with 31st Assin 1259, and died from its effect on the 23rd October 1852 corresponding with 8th Kartick 1259; 2nd count, being, accomplices in the above act, and 3rd count, being accessaries both before and after the fact.

CRIME ESTABLISHED. Accomplices to culpable homicide.

Committing Officer—Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 10th January 1853.

Remarks by the sessions judge.—On the 15th October 1852, Allee Chowkeedar, the father of the prosecutor, went his rounds at Sahib Nuggur. At midnight, he entered the house of Neton Bewah, with whom he appears to have had an illicit connection, when the prisoners Nos 13, 15 and 16, who were her relatives, having been informed of the circumstance, attacked and assaulted him. He ran away from them, but they pursued him some distance, and again assaulted him, and then brought him back to the house of Neton Bewah in a state of insensibility. In the mean time Bhekoo Sircar came and beat the deceased, and they took him to the *zemindaree* cutcherry, from whence he was conveyed home by Dosoor Chowkeedar and others. On the 23rd October, he died, having previously made a statement before the police, implicating the prisoners. All the prisoners denied the assault, but admitted, with the exception of Khoodee, that they had taken up Allee Chowkeedar, in the house of Neton Bewah, and made him over to the

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Case of BHEEKOO SIRKAR and others.

zemindaree cutcherry. From the evidence of the witnesses it was proved, that the deceased was severely assaulted by the prisoners, and that he died, in consequence; but there was no evidence to prove, that they had any intention to commit murder. The law officer convicted them of being accomplices in the culpable homicide of the deceased, and declared them liable to tazeer. I concurred in the finding, and sentenced the prisoners as stated in the proper column.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I see no reason to interfere with the sentence passed on the prisoners *Bheekoo* and *Khoodee.*

PRESENT:

W. B. JACKSON ESQ., *Judge.*

GOVERNMENT ON THE PROSECUTION OF RAMCHUNDER BOSE

versus

HUREENARAIN CHUCKERBUTTY.

24-PERGUNNAHS.

1853.

April 8.

Case of HUREENARAIN CHUCKERBUTTY.

The prisoner was convicted of embezzling money received in Calcutta on account of a house of business in the 24-Pergunnahs.

CRIME CHARGED.—Embezzlement, inasmuch as on the 20th February 1852, he, being then a gomashta of Harradhun Coondoo of Chitpore, did by virtue of his said employment at Chitpore, there receive three cheques on the Oriental bank of Calcutta to the extent of Co.'s rupees 1,600, which he got cashed at the bank on account of his master, the said Harradhun Coondoo, but which sum he did not pay to his master at Chitpore as he was directed to do, but did fraudulently embezzle and steal.

CRIME ESTABLISHED.—Fraudulently embezzling and stealing Co.'s rupees 1,600 from his master.

Committing Officer—Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 17th January 1853.

Remarks by the additional sessions judge.—The abstract of this charge as it was first drawn up by the magistrate, was as follows:—"Embezzlement inasmuch as on the 20th February 1852, he being, then a gomashta to Harradhun Coondoo, did by virtue of his said employment receive money to the amount of Rs. 1,600, on account of his master the said Harradhun Coondoo, and did fraudulently embezzle and steal the same."

Now it appears from the abstract of the examination and grounds of commitment, that the money was received at the

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Case of HUREENARAIN CHUCKERBUTTY.

Oriental bank, which is at the town of Calcutta and beyond the jurisdiction of the magistrate, and although it was stated that the prisoner was apprehended in the 24-Pergunnahs, yet there was nothing to show that the cheques by virtue of which the money was obtained by the prisoner, were received by him, or where he should have paid the money, and until these points were made clear, I should not have commenced the trial, but when the magistrate explained that the cheques were received by the prisoner within the magistrate's jurisdiction, and that he should there also have paid the money which he received from the bank, I requested him to alter the charge as it now stands in the calendar. He, however, prefers his own charge and has requested me to note that the alteration has been made at my request. When I had taken the deposition of the prosecutor and before I took the plea of the prisoner, I had great doubts, whether the prisoner should be tried by me or in Calcutta, but as when I have on other occasions made reference on points of law, I have been directed to try the case and afterwards, if it were necessary, make the reference, I went on with the trial. The prosecutor states, that he and the prisoner went together to receive three cheques from a person called Obhoychurn Gooho in Calcutta, and that as the day was far advanced they both went back to Chitpore, and that he kept the cheques in his own possession during the night, and the next day he sent the prisoner with the cheques to get them cashed at the bank in Calcutta, but the cheques are dated 20th February 1852, and the bank book shows, that they were cashed on the same day and the cashier of the bank states, that it was at 2 or 2½ P. M., so that the statement of the prosecutor appeared to be false, on a point which bears strongly on the review of the case, but the man who drew the cheques was called, and showed by his books that he wrote the cheques and gave them to the prosecutor and the prisoner on the 17th of February. The prosecutor states, that he gave the cheques to the prisoner without endorsing them, for he was able to endorse them as well the prosecutor. Now the cheques are drawn by Obhoychurn Gooho, one of them in favor of Harradhun Coondoo, another in favor of Kristsum Coondoo, and the third in favor of Denonauth Coondoo, who are relations of each other; the prosecutor and prisoner serve Harradhun Coondoo, but none of these people at the time were in the neighbourhood of Calcutta. The cheques are all blank, endorsed in different hand-writings, which indicates a fraudulent intention, for they were not endorsed by the prisoner in whose favor they were drawn; the prosecutor does not know who endorsed them, but he states, that the *gomashtas* were authorized to endorse them for their masters. Now, it appears singular, that

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the prosecutor being at the time at the head of establishment should have given out from his own charge the three cheques, which he had not endorsed, and it is strange that the *gomashta* should be allowed to endorse such papers as well as, and on this occasion in preference to, the head of the establishment. None of the Coondoo family and none of their *gomashtas*, except the prosecutor and the prisoner, could be produced to give the evidence on the trial. There are witnesses who saw the prisoner at the bank, and others who saw him afterwards as they state with the money, and as the prisoner allowed before the magistrate that he received the money at the bank, but said, he was robbed of it, as also he stated in his defence, there can be no doubt about his having received it, and as he decamped without paying it to his superior, who should have received it, and as he gave no explanation at the time for not having done so, I find him guilty of the crime with which he is charged, and as the cheques were written on the 17th of February, there is no reason to doubt that they were received on the 20th from the prosecutor in the 24-Pergunnahs and that the money should have been paid in the same district, and consequently, I believe that this Court had power to dispose of the case, which I should have doubted had the cheques been received in the town of Calcutta and immediately cashed there, and provided, it could not be shown that the evil intention had not first been entertained in the 24-Pergunnahs. The prisoner's pay was only rupees 5 by the month, and he was often employed to receive large sums of money and he has previously borne a good character.

Sentence passed by the lower court.—To be imprisoned with labor and irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The prosecutor is the managing *gomashta* of Harradhun Coondoo's house of business at Chitpore, in the jurisdiction of the 24-Pergunnahs; he the prosecutor on the part of the house gave three cheques for rupees 1,600, to the prisoner, a clerk in the house, to get cashed at the Oriental bank in Calcutta; it is proved and admitted, that prisoner did get them cashed and received the money, but did not pay it into the house: in his defence, he says, that it was stolen from him in the China bazar, but this is not proved; as he received the money for the house and for the purpose of being carried at once to the house and there paid in, and has not done so, he could not legally apply it to any other purpose, and as it is not proved that it was stolen from him, the inference is that he has applied it to some other purpose for his own benefit, and this is embezzlement; the prisoner urges in appeal, that the cheques were due to three different persons; this is true,

but they were all connected with the house apparently, and the fact is of no consequence; prisoner received the cheques from the manager of the house, and was bound to deliver the money to him; he, as manager of the house, is competent to prosecute, without special power from the individuals in whose favor the cheques were drawn; the manager represents the house, and the case is between the house and the prisoner, a clerk in that house; a doubt has been raised, whether the embezzlement took place in Calcutta or in the 24-Pergunnahs; as the prisoner was bound to deliver the money to the house, and his not doing so constitutes the embezzlement, I think the court of the 24-Pergunnahs, where the house is situate, has jurisdiction. With reference to the observations of the sessions judge regarding the charge, I think it was right as originally laid. The prisoner disposed of the cheques properly, but he received the money as the servant of the house and his misapplication of the money constitutes the offence. I see no reason to interfere.

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Case of HURREENARAIN CHUCKERBUTTY.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT ON THE PROSECUTION OF RUNGARAM DOSS

versus

BHANOORAM DOSS.

SYLHET.

1853.

April 8.

Case of BHANOORAM DOSS.

Appeal rejected in affirmation of conviction and sentence.

CRIME CHARGED.—Wilful murder.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 2nd February 1853.

Remarks by the sessions judge.—The deceased caught some of the prisoner's cows grazing in his field, and was taking them away when the prisoner interposed. A struggle ensued between them and the prisoner struck deceased a blow on the head, which fractured his skull and caused his death eight days afterwards. The witnesses say, the prisoner struck the deceased repeatedly after he fell, but the civil surgeon declares, there were no marks thereof on his body.

The prisoner made a voluntary confession before the darogah, and twice before the magistrate of having struck the deceased, but urged, that the deceased had first struck him, and this is probable as the prisoner had a wound on his arm, but he declared he had no witnesses to support his defence.

Before this court he denied, that he had struck the deceased and declared the witnesses were not present, and that one

1853. April 8. Case of BHANOORAM DOSS.

of them and the deceased had beaten him, and that his confessions were made when he was senseless, and he named witnesses in support, but I have not called them as the magistrate explained to him, that he was committed to the sessions and asked him if he had any witnesses, and he distinctly stated, no.

Sentence passed by the lower court.—To be imprisoned without irons for three years, and to pay a fine of (20) twenty rupees, on or before the 11th February 1853, or in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner's repeated confessions on the 11th and 14th January, which are duly attested, and the evidence of eye witnesses, fully establish the prisoner's guilt. I confirm the session judge's sentence.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND GOBIND NAG

versus

NUDDEARCHAND, *alias* KHOODEERAM HARREE (No. 5), AND UDDIT SUTGOPE (No. 6).

BEERBHOOM. 1853. April 9. Case of NUDDEARCHAND, *alias* KHOODEERAM HARREE and another. Sentence of the sessions judge confirmed in appeal.

CRIME CHARGED.—1st count, Nos. 5 and 6, dacoity in the house of Gobind Nag, prosecutor, from whence property valued at rupees 7-7, was plundered; 2nd count, No. 6, accomplices in the said dacoity, and 3rd count, No. 5, knowingly receiving property acquired by the said dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 11th February 1853.

Remarks by the sessions judge.—The prosecutor's house was entered on the night of the 2nd Maugh or 14th January last, by a gang of ten or twelve dacoits, and plundered of property valued at rupees 7-7.

As they were decamping from the village, one of them, the prisoner No. 5, was captured by the chowkeedars and *munduls* with a brass dish in his possession. He confessed before the darogah on the 15th January, but denied when brought before the magistrate. The prisoner, No. 6, was recognized at the time, and was also named as one of the gang in the confession of prisoner, No. 5. He confessed before the darogah and also before the magistrate.

1853. April 9. Case of NUDDEAR CHAND, *alias* KHOODEERAM HARREE and another.

On the trial both prisoners denied the charge, prisoner No. 5, stated, that he was not in a state to commit a dacoity; he certainly is a leper; but the evidence against him is complete, and is no way shaken by that of the witnesses called for his defence. The prisoner No. 6, states, that his confessions were extorted from him by the police, but brings no proof that such was the case.

I convict the prisoner Nuddearchand, *alias* Khoodeeram Harree, No. 5, and the prisoner Uddit Sutgope, No. 6, of dacoity in the house of the prosecutor, and sentence them both to eight year's imprisonment with labor in irons.

Remarks by the Nizamut Adawlut. - (Present: Mr. J. Dunbar).—One only of the two prisoners convicted, has appealed. The evidence against both is sufficient. The Court see no reason to interfere.

PRESENT:

SIR. R. BARLOW, BART., *Judge.*

GOVERNMENT AND GUNGACHURN ROY.

versus.

CHUNDERNATH GOOHO (No. 1), KALI DASS DUTT (No. 2), USGAR (No. 3,) SIRDAR KHAN PEADAH (No. 4), KAMAL GAZI (No. 5), AND PETUMBER DHOPIE (No. 6).

BACKERGUNGE. 1853. April 9. Case of CHUNDERNATH GOOHO and others. The prisoners embezzled their master's property, stating that it had been taken from them by dacoits. Sentence affirmed.

CRIME CHARGED.—1st count, Nos. 1 to 6, theft of rupees 515, property of Gungachurn Roy, prosecutor; 2nd count embezzling rupees 515, the property of the prosecutor; 3rd count, being accomplices in the above crimes; 4th count being privy to the above crimes.

CRIME ESTABLISHED.—Theft of rupees 515, property of Gungachurn Roy, prosecutor.

Committing Officer—Mr. F. B. Simson, assistant magistrate, with full powers, at Backergunge.

Tried before Mr. A. S. Annand, officiating sessions judge of Backergunge, on the 6th December 1852.

Remarks by the officiating sessions judge.—The prosecutor deposes that on the 10th Assin, his head *peadah* named Nusseeroodeen, came to him at Burrisal and told him that on the 8th idem, his *naib*, Chundernath Gooho, with his mohurrir, Kalee Dass Dutt, Usgar and Sirdar Khan, *peadahs* and Kamal Gazee and Petumber Dhoopie, *haldars*, had started from prosecutor's *cutcherry* at Batojur, with more than rupees 500, which they were to bring to him in Burrisaul; that when they arrived at Hatkola, they had been robbed by dacoits and that the *naib* had gone off to give intelligence at the *thannah*.

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Case of CHUNDER-NATH GOOHO and others.

On hearing this deponent sent the *peadah* into the mofussil to make further inquiries, and gave himself a petition to the magistrate, who ordered the darogah to inquire into the case, when it appeared that no dacoity had taken place, but that the prisoners had got up a false charge of dacoity, and had appropriated the prosecutor's money on the pretence that dacoits had carried it off.

The prisoner, No. 1, Chunder Nath Gooho, stated at the *thannah*, that he left Batojur *cutcherry* on the night of the 8th Assin, in a boat with rupees 515, of his master's, which was in his and the other prisoner's charge to bring in to his master at Burrisaul and stopped at Hatkola, when after about an hour, a *dinghee* came up from the south with about ten men in it, attacked his boat, beat his men, threw Usgar and Sirdar Khan into the water and entering the boat pushed him away from where the money was and carried it off. That he recognized amongst the dacoits. Drap, Suber Khan and others. On suspicion raising that the complaint was false and his being again interrogated, he replied, that he was not on board the boat at the time of the dacoity. When accused of having made away with his master's money, he denied the charge, stating that he was sleeping on shore at Hatkola on the night in question, and had left the money in the charge of Usgar, No. 3, and Sirdar Khan, No. 4, who had made away with it. In the magistrate's court he denied the charge also, but said, that Usgar had said that a number of men had attacked the boat and carried off the money and the box. Kalee Dass Dutt, prisoner, No. 2, replies, that when they stopped at Hatkola, the prisoner No. 1, placed the money under a *sutranjee* and leaving it in charge of Sirdar Khan and Usgar went on shore to sleep. That suddenly waking up he felt somebody pushing the boat which was half full of water, that Sirdar Khan was setting on it and Usgar in the water, and they told him that the box was taken and the others having gone on shore, he and Petumber moved the boat towards the north when he saw five or six men in a *dinghee* going rapidly away, and people called out there goes the boat, when Usgar and Sirdar returning told him, that they had been attacked and robbed, but as these men were *latials* he did not think the boat could have been robbed so easily and suspected that they themselves were the thieves. In the magistrate's court he makes the same statement, accusing the two *peadahs* of being the thieves. But it is difficult to understand how they can have made away with the money save in collusion with him and the rest of the party. Prisoner No. 3, Usgar *peada*, says at the thannah, that the boat was attacked and robbed as before stated by seven or eight men armed with *lattees*. He makes the same defence in the fouzdaree and

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in my court he denies his guilt. The defendant, No. 4, Sirdar Khan, replies to the same effect as the last. The prisoner, No. 5, Kamal Gazi, relipes, that he suspected that Usgar and Sirdar Khan had made away with the money. That he was not in the boat at the time, but was told that a dacoity had taken place. Prisoner, No. 6, Petumber Dhopie accuses Usgar and Sirdar Khan of having taken the money as the last prisoner has done.

The first witness deposes to the prisoners starting with a certain amount of money, which they were to bring to Burrisaul on the 8th Assin. That on the next day, the prisoner No. 1 returned and said, that his boat has been dacoited at Hatkola and all the money amounting to rupees 515, carried off. Both prisoners Nos. 1 and 2, told him that their boat had been robbed by dacoits.—Witness, No. 2, deposes as above. Witness, No. 3, living at Hatkola, states, that on the 8th Assin he was sleeping in his shop, when about one *puhur* of the night remained, he heard some one call out "*dhur dhur*," and going out saw nobody, afterwards the prisoner No. 1 came from the house of a prostitute named Kalee Tarah, who was with him, and the woman asked him what noise he had heard, the prisoner said nothing but after that going to the banks of the *khal* called out *hi-hi* and returning and going towards the north, Kalee Tarah told witness that rupees 515 of the prosecutor had been carried off. Witness, No. 6, corroborates the above and states, that there were many other boats in the *khal* at the time. Witness, No. 7, the chowkeedar of the *hat* says, that on the night in question, Usgur Sirdar and Sirdar Khan called out " nilo nilo;" and running up he saw these two men near the house of Rampersaud Pall, and prisoner, No. 1, and Kalee Tarah coming up from the west. The three men then said their boat had been dacoited and rupees 515 taken. Went with them towards the mouth of the *khal* but saw no boat or men going away. The darogah came the next day and no proof of any kind could be obtained, but it was clear that the case was a false one and got up by the prisoners to enable them to appropriate the money of the prosecutor. The boat was in its usual state after the dacoity was said to have occurred, nothing out of order in it, and the prisoners clothes were all dry and as usual. There were 40 or 50 boats in the *khal* near the prisoners and people in them, but none of them had heard any thing of the dacoity. The prisoners Nos. 2, 5 and 6, all told witness that a docity had occurred, but they said nothing of any single thing having been taken away except the money.

It is clear from the admission of the prisoners and the evidence of the witnesses that the former were entrusted with

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rupees 515 to bring to their master at Burrisaul; that on arriving at Hatkola not one *ghurree* distant from where they had started, they *lagawed* the boat when the prisoner went to the house of a prostitute and remained there until about three in the morning, when no doubt as previously concerted between them the two *peadahs* cried out that they had been robbed, when prisoner coming up to them and appearing to credit what they said went the next day to the thannah and gave a deposition to that effect. Prisoner No. 2, certified also to several witnesses that a dacoity had taken place though he afterwards to save himself probably said, he was asleep at the time and suspected that Usgar and Sirdar Khan had made away with the money. To be convinced of the falsehood of the story of the dacoity it is sufficient to remember, that there were 40 or 50 boats lying near that of the prisoner in the *Khal* many people sleeping in them, but that no one of them heard any thing of the matter and the absurd tale told by the prisoners themselves.

I have therefore not the slightest doubt that the prisoners leagued together to rob their master of the money entrusted to them, and that they got up this charge of dacoity, that they might be enabled to do so with impunity. It appears to me that the prisoners having made completely away with a large sum of money entrusted to them, and having got up a false charge to enable them to escape punishment for so doing are guilty of theft, and I have accordingly found them guilty of that crime, and sentenced them as shown in column 12, in opposition to the opinion of the jury who found them guilty of embezzlement only.

Sentence passed by the lower court. -Nos. 1 and 2, each to be imprisoned for five (5) years, with labor in irons, and Nos. 3, 4, 5 and 6, each to be imprisoned, for four (4) years, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)--The prisoner Chundernath, *naib* of the prosecutor, in company with Kali Dass Dutt, his *mohurir*, and Petumber Dhopie, a *peadah*, and others, went with rupees 515, belonging to the prosecutor, in a boat from the cutcherry to Beytagee hât *en route* to Burrisaul. They put to there, and in the course of the night, raised a cry of dacoits, who, they said, had attacked the boat, and plundered it of the above sum.

Those on the spot who came out of their houses, saw no appearance of dacoits, nor had any dacoity, so far as the local enquiry held by the darogah could ascertain, been committed.

The contradictory accounts given by the prisoner, Chundernath, first describing the attack and recognizing the dacoits, afterwards admitting that he was not in the boat, but sleeping

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in the bazar, and then his statement, that he made overcharge of the money to Usgar and Sirdar Khan, convicted on their appeal by Mr. Mytton, on the 1st February last, and the fact, that none of the people belonging to the numerous boats, which were at the bazar *ghaut*, on the night of the alleged occurrence, heard any thing of the dacoity, are all circumstances of strong presumption against the prisoners. Kalee Dass, the *mohurir*, also gave information of a dacoity having taken place, while it is clearly shown, that none occurred. The whole story is proved to be a fabrication, and he afterwards charged the convicts, Usgar and Sirdar Khan, with the offence in collusion with other parties. Petumber Dhopie, the third prisoner, made a similar defence. The prisoners were in charge of their master's money, which they were ordered to take to the treasury for payment of Government revenue. Their plea of dacoity being disproved, there is the strongest suspicion that their discrepant stories at subsequent periods of the investigation, are subterfuges to evade responsibility. The money never reached the prosecutor's son to whom it was consigned, and as the prisoners give no satisfactory account of its loss, it must be presumed, that they all acted in concert to make away with it. Under the above circumstances, I see no ground for interfering with the sessions judge's orders. The conviction of the prisoners Nos. 1 and 2, should have been on the 2nd count of embezzlement, and of prisoners No. 6, of privity thereto, which by Act XIII. of 1850, are punishable in like manner with theft.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

MUSUMMAT PHOOLUSSUREE

versus

GOORYE BEHRA (No. 1), AND BINDABUN BEHRA (No. 2).

MIDNAPORE.

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Case of GOORYE BEHRA and another.

The prisoners having appealed in a case in which they had been convicted of culpable homicide in having beaten two thieves, after they had been secured, so severely, that one died and the other will be a cripple for life, the sentence of the sessions judge was confirmed.

CRIME CHARGED.—Wilful murder, in having so severely beaten the husband of the prosecutrix, Sham Jana, as to cause his death from the effects of the said beating, two days after, *viz.*: 6th January 1853; 2nd, with aiding and abetting in the said murder.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 28th January 1853.

Remarks by the sessions judge.—The prisoners plead "*guilty*" of having assaulted the deceased, Sham Jana, but urge in defence, that he and Doolall Dass came to their (prisoners') granary, at 12 o'clock at night, and were in the act of stealing therefrom, when prisoners caught them and assaulted them with *lattees*, from the effects of which Sham Jana died shortly after. The witnesses for the prosecution depose, that hearing a noise at midnight, close to the prisoners' granary, they ran to the spot and found the prisoners assaulting the deceased and Doolall Dass with a *lattee* and some sharp cutting instrument; that the prisoners then stated, that they had caught deceased and Doolall Dass in the act of stealing and had assaulted them. They further depose, that the deceased, after he was beaten, went to his home; that Doolall's leg having been fractured, was unable to walk, and that his brother-in-law, Gorachand Behra, witness No. 19, carried him home on his back. From the inquest and evidence of the assistant surgeon, it appears, that the body of Sham Jana bore the marks of severe beating, with a club and other wounds inflicted by a sharp pointed instrument, and the assistant surgeon gave it as his opinion, that Sham Jana's death was caused by the wounds inflicted upon him. The evidence of the prosecutrix, the wife of the deceased, Sham Jana, and that of Doolall Dass, at the thannah, who was incapacitated by his wounds from appearing, either in this or the magistrate's court, tends to show that both Doolall Dass and deceased were taken away on the evening of the 4th January by the prisoners on the plea of settling accounts, that the prisoners tied their hands with a string, put a cloth over their mouths and assaulted them, and then tied them to a bamboo,

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and carried them towards their houses and threw them on the ground, where they remained insensible, till discovered early on the morning of the 5th January. No evidence has been adduced corroborative of this version of the case and probabilities are opposed to its truth. According to the *sooruthal* the spot which Doolall Dass pointed out as the one where he and the deceased were thrown, no marks of any kind of persons having been thrown there were traceable. Doolall Dass likewise does not account for the time that elapsed between the hour he was called away from his house by the prisoner Goorye Behra, in the evening, and at 12 o'clock at night, when the assault was committed; had Doolall and the deceased been taken away from their houses at the time and in the manner stated, it is reasonable to suppose, that their wives would have made some enquiries about them, and informed the village police if anxiety or suspicion had existed in their minds at their husband's absence. Proof of the prosecutrix's statement is altogether wanting. The confessions corroborated by the testimony of the witnesses are the only conclusive evidence of the prisoners' guilt, and by these alone must we be guided in passing sentence. These confessions are not quite consistent as to which of the prisoners assaulted the deceased, Sham Jana, though they agree, that neither the deceased, nor the wounded man Doolall offered any resistance whatever; that they were unarmed except with a *seind-katee*. Further, it does not appear from them, how the deceased and his accomplice entered the granary which bore no marks of having been broken into. The prisoners by their own showing never attempted to arrest the thieves, but wantonly and violently assaulted them in a brutal manner, that caused the death of one, and severe injury of the other, which may render him, if he recovers, a cripple for life. The assessors declare the prisoners *guilty* of culpable homicide in which verdict I concur and under all the circumstances, sentence the prisoners as indicated in the statement.

Sentence passed by the lower court.—Seven (7) years' imprisonment, each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The violence used towards the thieves, appears to have been quite unnecessary. The prisoners had them completely in their power, with good evidence to prove their guilt, on making them over to the police. The savage way in which they continued to beat them after they had been secured, is wholly unjustifiable. I see no reason to interfere with the sentence passed upon them by the sessions judge.

PRESENT:

SIR R. BARLOW, BART.,
W. B. JACKSON,
AND
J. DUNBAR, ESQRS., } *Judges.*

BANESSUR KURMOKAR AND GOVERNMENT

versus.

BIPPRODOSS CHOWKEEDAR.

HOOGHLY.

1853.

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Case of BIPPRODOSS CHOWKEEDAR.

Prisoner convicted of being an accomplice in murder on circumstantial evidence, and sentenced to transportation for life. The direct evidence rejected as not trustworthy.

CRIME CHARGED.—1st count, wilful murder of Hurish Kurmokar, prosecutor's brother, and 2nd count, privity to the wilful murder of the prosecutor's brother, Hurish Kurmokar.

Committing officer—Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 15th March 1853.

Remarks by the officiating additional sessions judge.—The prisoner is charged with the wilful murder of the prosecutor's brother, Hurish Kurmokar, and with privity to the same, and pleads "*not guilty*" to both counts of the indictment.

The first witness, Harochung, deposes, that the deceased was in the habit of sleeping at his house, and that towards morning on the last occasion the prisoner awoke him and called him away on the plea that the *phaurcedar* required him; that a few minutes afterwards he heard an exclamation of *bapré*, and proceeding in the direction from which the sound issued, saw the deceased prostrate on the ground and the prisoner standing over him with a club *(lat'hee)* in his hand. He adds, that on seeing him, the prisoner used menaces which induced him to run off home, and that he never saw the deceased alive again; that he heard no blows given, and is ignorant whether any dissentions existed between the parties.

There is a slight discrepancy between his evidence before this Court and that taken by the Magistrate, and it consists in his having there stated, that he saw the prisoner strike the deceased.

Uno Beniani was the next witness examined, and she gives direct evidence to the fact, declaring that she saw the prisoner in the act of committing the murderous assault. She states, however, that she did not disclose what she had seen to any of her neighbours, and never saw deceased alive again.

This deponent is declining in years and her evidence in consequence of a naturally impaired vision, is perhaps not entitled to unreserved belief; but it is consistent with the statements of other witnesses, and I have attached to it a measure of credibility.

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I now come to the most important evidence in the trial. It is that of Sharoda, a female *brahminee,* who may fairly be regarded as the origin and cause of the strife which has terminated so fatally. She describes herself as the favored mistress of both the prisoner and the deceased, and discloses the fact that the germs of jealousy and hatred were gendered in the bosom of the former on her rejection of his attentions in favor of the latter. Her testimony goes to shew, that on the night of the murder towards morning, she heard the prisoner call the deceased away, and having her misgivings relative to the proceeding from the known ill-will that existed between the parties, and the fact of her having frequently seen the prisoner threaten and menace the deceased with some grievous harm, followed the direction they took, and presently saw the prisoner standing over his victim, lying on the ground, with an iron bound club in his hand. She advanced towards him and asked him why he had acted thus, when he replied that the deceased had been very dear to her during life, and that she was quite welcome to him now, recommending her to carry him home.

Another witness, Diro Chundaline, also deposes to the fact of hearing the deceased called away by the prisoner, and seeing him prostrate on the ground, and the prisoner standing over him. The deceased was sleeping in the verandah of the house occupied by the deponent when taken off by the prisoner, and deponent, from motives of curiosity, followed them after a while.

Before the magistrate this witness stated, that she heard the sounds of blows which induced her to go after the prisoner and the deceased, and that the prisoner held a club in his hand while standing at the spot where the deceased was lying, both which circumstances she omits in her examination before this Court.

The evidence of the assistant surgeon is given in great detail, and shews, that he paid much attention to the appearances exhibited on the *post mortem* examination. The substance of his testimony proves, that in his opinion death was caused by strangulation with a rope or some tight ligature, after the subject had been rendered insensible by the contused wound apparent on the head, and before life was extinct. Mr Ross' evidence will be read with much interest, and he deserves great credit for the careful way in which he appears to have examined the body.

The next two witnesses examined for the prosecution are the *gomashtas* of the village where the murder took place, who communicated the occurrence to the police authorities and were present when the prisoner indicated the spot where the body was found, and admitted that he had placed it there with

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the assistance of others, though denying the murder. Their evidence is clear and consistent throughout, and shews that the prisoner without hesitation pointed out the hollow in the bed of the river in which the body was discovered and raised it with a bamboo.

The last witness examined is the darogah of the police jurisdiction in which the occurrence took place, who details with great clearness, the entire transaction from the time of his being made acquainted with it up to the discovery of the body on the indication of the prisoner, the holding of the inquest, the exhibition of the marks of violence on the corpse when taken out of the water, and the admission of the prisoner of having helped to secrete it.

The prisoner denies the charge and repudiates his mofussil confession, declaring himself to be the victim of police intrigue, oppression, and ill-treatment, and charging the darogah with bribery and corruption with the view of screening his alleged accomplice in the murder, Omachurn Banerjea, at the instance of that individual's mother, the witness Sharoda Brahminee. He also disclaims his imputed connection with that female; but cites no witnesses to his defence, which in effect amounts to little more than a simple denial of the accusation charged.

The *futwa* of the law officer acquits the prisoner of wilful murder, but convicts him on presumption of culpable homicide; and on the legal proof of his mofussil confession of being privy to the same, and declares him liable to discretionary punishment by *tazeer*.

I dissent from this verdict and convict the prisoner of murder. The circumstantial evidence against him is of an overpowering nature; and I have no doubt that he inflicted the mortal blow at the time he was observed standing over the body of the deceased while lying on the ground. That he is of a quarrelsome, overbearing disposition and shunned and dreaded in consequence, is apparent from the evidence of the darogah, who investigated the matter, and had opportunities of learning particulars relative to his habits and conduct, and that he has long had a predilection for the woman Sharoda, and was much exasperated at her preference of the deceased, there can be little question.

I cannot help feeling, however, that the prisoner had assistance in removing the body, and that possibly the act was resorted to before life was totally extinct, and accomplished by means of some tight ligature round the neck. That process might have given the last finishing touch to the extinction of the vital principle, and the thought creates a repugnance in the mind to pronounce the prisoner obnoxious to the extreme penalty of the law. I therefore give him the benefit of the

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doubt and recommend that he be sentenced to perpetual imprisonment with labor in irons in the Alipore jail.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Bart and Messrs. W. B. Jackson and J. Dunbar.)

SIR R. BARLOW.—The sessions judge convicts the prisoner of wilful murder, and the conviction is borne out by the evidence of eye witnesses, as well as by the circumstances of the case, which are very strong presumption against the prisoner. The act was clearly a deliberate one. The prisoner was seen standing with an iron bound club, over the body of the deceased, Hurish, and whether he was killed by the blow of a club or met his death by means of some tight ligature round his neck, is, as regards the prisoner's guilt and responsibility, of no importance. The deceased was a strong, healthy man, and died a violent death, as the prisoner himself admits in his mofussil confession, in which, however, he charges other parties with the murder, while he acknowledges having assisted to throw the corpse into the river, where it was sunk and pointed out by him.

I see nothing on the record which would justify a mitigated sentence, and must therefore recommend capital punishment.

MR. WELBY JACKSON.—The evidence in this case is of a nature which requires great care, in estimating its value; the prosecutor says, he heard from Shureeutoollah, that Omachurn the son of a *brahminee* woman, named Sharoda, and the prisoner Bippro Dass Chukerbutty had killed his brother, the deceased; they had struck him with *lattees*; the police darogah came and arrested the prisoner. Bippro Dass, who said that Omachurn and Haroo had killed the deceased; that he had been deterred by threats from reporting it; that he had helped to throw the body into the river, and offered to show where it was; he did point out the body in the river, and took it out: the body was afterwards examined by the surgeon, who said there was a severe blow on the head, which cut open the scalp, and much extravassaion of blood, both on the brain and around the wound; there were also distinct marks of strangulation, not by drowning, but by a rope round the neck. *Haroo* [I suppose this is the man accused by the prisoner, though it is not so stated any where] says, that the deceased slept at his house, and that about 1½ hours before dawn, the prisoner called away the deceased from his house, and the deceased went with him; that hearing an exclamation he went out, and saw the prisoner standing with a club in his hand under the mangoe tree, and deceased lying on the ground; he heard no blow given. Before the magistrate, this witness said he saw a blow inflicted by prisoner on deceased.

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Uno Brahminee, is represented as an old woman with weak sight, she swears, she was going out to the *ghaut* at day dawn, and actually saw the prisoner strike the deceased in the *fields*.

There is a marked discrepancy both as regards time and place, between the above two witnesses.

Musst. Saroda, is a *brahminee* widow, mother of Omachurn; she says she had an intimacy with the prisoner and the deceased too, but she turned off the prisoner, because he was of inferior caste, and there was thus enmity on his part against deceased; that she heard the prisoner call the deceased out of the house, where he slept, an hour or more before daylight, and afterwards suspecting foul play, followed and saw deceased on the ground, and prisoner standing over him with a club: she asked prisoner why he had killed him and prisoner said "you were very fond of him, you had better take him away." At the thannah this witness said, she saw prisoner dragging deceased along the ground.

Musst. Dooroo, mother of Haroo, says, the deceased slept that night in her verandah, that she heard prisoner call him before day light; she also followed prisoner out, and saw deceased on the ground, and prisoner standing over him; before the magistrate, she said, she heard blows and therefore went; but at the sessions, she omits this: at the thannah she said she heard all this from her son.

In the first place, I reject the evidence of Uno Brahminee; I observe the sessions judge considers it of doubtful value.

The brahminee widow's account of the cause of enmity is natural and probable enough; as to what was seen under the tree, there is her evidence and that of Haroo, (musst. Uno's being rejected and musst. Dooroo's too, because she spoke on hearsay at the thannah, and at the sessions of her own knowledge,) both Haroo's and musst. Saroda's have wavered on the most important point, the precise act which they saw under the tree; as it was an hour before day light, probably they could not see very distinctly; they agree at the sessions in saying they saw deceased on the ground, and prisoner standing over him with a club, but Haroo says nothing of the important words used by Saroda to the prisoner and his reply, nor did she at the thannah. There is thus an evident inclination on the part of these two witnesses to waver and exaggerate, and the prisoner is entitled to the benefit of the doubt arising from this, as to what was seen to happen under the tree; but the evidence is clear and consistent, that the prisoner called the deceased away, out of his house, and was seen afterwards with him, by persons who watched them, owing to the suspicious nature of the circumstances under which this took place.

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Case of BIPPRO DASS CHOWKEEDAR.

Again the confessions of the prisoner and his showing where the body was concealed, prove, that he knew of the murder, and helped to conceal the body; and the surgeon's deposition proves, that the man was knocked down with a blow on the head, and then strangled.

The prisoner accused Haroo and Omachurn the son of Saroda, of committing the murder, in his confession at the thannah, there is nothing in support of this; but it is by no means improbable, that Omachurn should have enmity against deceased, on account of his admitted intimacy with his mother, and it is to be observed, that the principal evidence against prisoner is that of Haroo and Omachurn's mother, given too with a disposition to exaggerate.

The facts that are positively established are simply, that prisoner called the deceased out of his house an hour before daylight under suspicious circumstances; that the deceased was then murdered, and that the prisoner helped to conceal the body; these facts are sufficient to justify the inference, that the prisoner was an accomplice in the murder, if not the sole agent. I would therefore convict him as an accomplice in the murder. I would sentence him to suffer death.

As there is a difference of opinion between Sir R. Barlow and myself, his conviction being of actual murder, and based on the evidence of eye witnesses, while I convict of complicity only, and reject much of the evidence, the case should go to a third judge.

MR. J. DUNBAR.—A careful consideration of all the circumstances connected with the case, as shown on the record, impresses me very strongly with the belief, that others besides the prisoner, were concerned in the murder of Hurrischunder. The prosecutor, in his deposition before the darogah, averred, that according to the information he had then collected, Omachurn and Bippro Dass had seized the deceased in the house of the former, had dragged him towards the house of Bura Bama, and there dispatched him. It is true, there is no evidence to support this statement, but it is by no means improbable, that the deceased's intimacy with the woman Sharoda gave offence to others, a well as to Bippro Dass, and the fact that the deceased was, as described by the medical officer, a large and robust man, renders it little likely that Bippro Dass could alone have over-powered, and killed him, in the manner in which alone it is clear from the evidence of the medical officer, that he was killed. He might no doubt, have been taken unawares, and have been murdered by one downright blow of a club upon the head, but I think, there are sufficient grounds for concluding, that his life was not taken in this way. The witness Hurro Chung swears, that he heard a cry of *bapré* just before

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going out of his house; and the medical officer distinctly says, that death was the consequence of strangulation. The body he says, was considerably elongated, and this could only have resulted from the man having been hung up, as there were no marks on the back or legs, as would have been the case, had the elongation been produced by the body having been dragged along the ground. Bippro Dass could not very well have hung him up unaided, and if he alone had been the author of his death, there can be little doubt that he would have been seized and secured by the villagers, most of whom must have been on the move very shortly after he had been seen by the witnesses near the body, club in hand.

The evidence of Hurro Chung (who was not accused by the prisoner, till after he had given his evidence before the darogah,) and the other eye witnesses, apart from the discrepancies in their several statements at the different stages of the inquiry, is not satisfactory in every particular. Sharoda and Dooroo Chundalnie say, that when the deceased was called out by the prisoner, they suspected something wrong, and therefore went out to see, yet no explanation is given of their suspicions in regard to an occurrence no way extraordinary. Not one of the witnesses appears to have seen any of the others, and all of them say, that they were frightened on seeing Bippro Dass standing over the body, and fled home, yet not one of them took the trouble to watch what was afterwards done with the body, or to give the alarm to the villagers, many of whom, (as appears from the map drawn out by the darogah,) lived close by. There has evidently been some influence at work to keep the witnesses from speaking out all they know, and it seems not improbable that others, even more guilty than the prisoner, have escaped. As, however, he has confessed, that he took an active part in concealing the body, I see no reason to doubt, the main fact sworn to by the witnesses, *viz.*, that he was seen very early in the morning standing near the body of the deceased, with a *lattee*, and with this fact established, in addition to his confession it is only reasonable to presume, that he had a hand in the murder. I concur with Mr. Jackson, in convicting him as an accomplice, but under all the circumstances, and with reference to the preceding remarks, I would sentence him to imprisonment for life, in transportation beyond sea.

MR. WELBY JACKSON.—With reference to the opinion of Mr. Dunbar and the reasons assigned for it, I concur in sentencing the prisoner to transportation for life.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

BHAGBUT SHAHA AND GOVERNMENT

versus

UPRAJEET CHOWKEEDAR.

MOORSHEDABAD.

1853.

April 12.

Case of UPRAJEET CHOWKEEDAR.

Conviction of burglary upheld in appeal, the pleas ed by the prisoner, both in defence and appeal, being unsupported by the evidence.

CRIME CHARGED.—1st count, burglary in the prosecutor's house, from which property to the value of rupees 5-10 was stolen, and 2nd count, having received and possessed property, knowing the same to have been acquired by the said burglary.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer—Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 19th January 1853.

Remarks by the sessions judge.—On the night of the 6th December 1852, at about 3 A. M., the prisoner burglariously entered the prosecutor's house, and stole therefrom property to the value of rupees 5-10. About 3 or 4 *russees* from the prosecutor's house he was apprehended with the stolen property by the *mohurrir* and a thannah burkundauz, who were then on their rounds, when he stated to them that he had obtained the property in his possession from the house of one of his relatives, and struck the burkundauz with a shovel, which he had in his hand. The hole which was cut in the wall of the prosecutor's house, was sufficient for a man to pass in and out of the house. The prisoner denied the charge, and in his defence stated, that Issuer Tewarry, the burkundauz, arrested him from enmity; but his statement was not proved. The prisoner was a chowkeedar of the village Mudna, which was two miles distant from the prosecutor's house. He was once before committed to the sessions on a charge of dacoity, but acquitted from want of proof. The law officer convicted him of burglary and theft on violent presumption, and declared him liable to *tazeer*. I concurred in the finding, and sentenced him as stated in the proper column.

Sentence passed by the lower court.—Seven (7) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoner's appeal is merely an enlargement of his pleas before the magistrate and at the trial that he has been accused through enmity, and that the stolen property was thrown down near him, so as to give support to the charge. But, in appeal, he charges the darogah, with having instigated

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the false complaint, while, before, he made the statement only as to the burkundauz, Issur Tewarry. Neither allegation is at all established by evidence, and there is nothing on the record, which causes a doubt as to the propriety of the conviction or order.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT

v.

RAMCHURUN SHABUCK.

TIPPERAH. 1853. April 12. Case of RAMCHURUN SHABUCK. Conviction of perjury upheld in appeal, the pleas urged by the prisoner being unsupported by any evidence.

CRIME CHARGED.—Subornation of perjury, in having caused Ramjoy Tipperah, to depose under a solemn declaration taken instead of an oath, before the principal sudder ameen of this district, that his name was Ramjewun, that by profession he was a *kasharee*, and that he had witnessed an assault committed upon himself, (the prisoner) by Ramguttee, Kisto Singh, and others, the servants of Bhugwan Takoor. Such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

CRIME ESTABLISHED.—Subornation of perjury.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 27th November 1852.

Remarks by the sessions judge.—In my abstract of convictions for the month of May, there occurred the following report of a conviction of perjury.

On the 27th of February, a complaint was laid against Ramchurun Shabuck and others, of assault and robbery. On the 3rd of March, Ramchurun instituted a cross charge of a similar nature against his accusers, and subpœnaed among their witnesses, a respectable dealer in brass utensils, named Ramjewun, and described as usual, with persons in his trade a *kasharee.* Ramjewun appears to have been absent from home, when the subpœna was served at his shop, and Ramchurun being unwilling to lose the weight of his evidence bribed the prisoner to assume Ramjewun's name and to depose to the alleged assault and robbery. This, he accordingly did, describing all he witnessed from his shop precisely as Ramjewun might have done. But one of the individuals accused by Ramchurun, Kisto Mohun Singh, brought the transaction to the principal sudder ameen's notice by petition, and the prisoner was apprehended, and has to-day undergone his trial on the charge of perjury

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He pleaded "*guilty*," his confessions at the thannah and before the magistrate, having previously been full and explicit.

The evidence in support of the indictment was distinct and unexceptionable, the real Ramjewun being one among the witnesses, and the prisoner's defence, if such it can be termed, was but an amplification of his plea.

I am sorry to say, I can see no reason for mitigation of punishment in this case. The prisoner, although of the Tipperah caste, is a particularly sharp and ready man, with every appearance of having his wits about him. A very paltry bribe seems to have readily induced him to become Ramchurun's instrument, in the latter's attempt to retaliate upon those who had accused him of robbery and violence, and the prisoner not only assumed another's name, but deposed to circumstances of which he admits he was totally ignorant. He was sentenced as shown in column 12.

The prisoner under trial in the present instance is the Ramchurun alluded to, in the above report, as inducing Ramjoy Tipperah to assume the name of Ramjewun, and to give false evidence in a cross charge of assault and robbery. He pleaded "*not guilty*."

The case for the prosecution was supported by three witnesses to the fact, and by some very conclusive circumstantial evidence.

The first proved, that the prisoner induced Ramjoy Tipperah to personate Ramjewun, and to accompany him to the principal sudder ameen's court for the purpose of giving evidence under that name.

The *bukshee* of the principal sudder ameen's court proved, that he wrote the attendance report of the convicted prisoner Ramjoy Tipperah, and stated, that the prisoner now committed produced the said Ramjoy in court, declaring his name to be Ramjewun and his caste that of a *kasharree*.

A second witness deposed, that the prisoner was present in Court when Ramjoy Tipperah gave a false deposition under the assumed name of Ramjewun.

The prisoner in his defence, while denying the alleged subornation of perjury, stated that he *had* furnished evidence through Ramjoy Tipperah. His witnesses he declined to have examined, as the only evidence they were in a position to give related to the assault case in the Criminal Courts.

The Mahomedan Law officer convicting the prisoner of subornation of perjury declared him liable to *accoobut*.

Entertaining no doubt of the prisoner's guilt and considering the suborner's offence heavier than even that of the perjurer, I sentenced him as shown in column 12.

Sentence passed by the lower court.—Four years' imprisonment with labor and irons.

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Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The appeal of the prisoner is on the ground that he was not aware of what Ramjoy's real name was, but believed it to be Ramjewun, on information given to him by a by-stander (named Ramsoonder Paul) on the occasion of an assault which he, the prisoner, states himself to have suffered. It is alleged, that Ramjoy gave the evidence under the false name, and subsequently confessed the act, ascribing it to the instigation of this prisoner, in collusion with the parties who were concerned in the assault case.

This is exceedingly improbable, Ramjoy having, by his confession, subjected himself to a sentence of imprisonment with labor and irons for 3 years.

The prisoner has adduced no evidence in support of his plea, and has not even named Ramsoonder Paul, the party above referred to, as a witness on his behalf.

There is no ground for interference with the conviction or sentence.

PRESENT:

W. B. JACKSON AND J. DUNBAR, ESQRS., *Judges*.

GOVERNMENT

versus

PURSHAD KAHAR.

SHAHABAD.

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Case of PURSHAD KAHAR.

The prisoner who had been convicted of perjury by the sessions judge was acquitted by the Nizamut Adawlut on the ground, that the variance in the two statements on oath made at different times by the prisoner was not of such a nature as to constitute the crime of perjury.

CRIME CHARGED.—Perjury, in having on the 29th October 1852, intentionally and deliberately deposed under a solemn declaration instead of an oath before the magistrate of Shahabad, that when seated in his house he heard the cries of musst. Khurleecheea, his sister, on which he went to the back of the house and saw Gubbur Sing committing rape on the person of the said musst. Khurleecheea whom he had thrown on the ground and who was senseless and making a noise, and on going there the prisoner, who is a *theekadar* of the village, ran off; and in having on the 9th December 1852, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the sessions judge of Shahabad, that when he was sitting in his house which adjoins that of the prosecutrix, there being a wall between, heard a noise proceeding from the yard of the prosecutrix's house, he ran round and saw that Gubbur Singh going out of the yard and tying up his *dhootee* as he ran, and when he

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entered the yard he saw musst. Khurleecheea senseless, such statements being contradictory of each other on a point material to the issue of the case.

CRIME ESTABLISHED.—Perjury.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 23rd December 1852.

Remarks by the sessions judge.- The prisoner in this case was committed by my instructions on a charge of perjury.

He was the principal witness in a charge of rape (Col. No. 4, for December 1852) preferred in the first instance by him against the *theekadar* of the village in which he lives.

The woman said to be ravished was his own cousin, separated without cause from her own husband and living in a house adjoining the prisoner.

The circumstances of the case and the facts elicited on the investigation, left no doubt whatever on my mind, that the charge was utterly false and groundless, a wicked and malicious fabrication got up by the parties against the *theekadar* from some latent motive.

The prisoner who was throughout the active party in the prosecution, swore before the magistrate, that he had caught the accused in the very act, within an enclosure, as detailed in the calendar. Before this Court, whether forgetful of his former statement, or confused at the closeness of the examination conducted by myself with some strictness, he told a completely different tale, stating that when he arrived, attracted by the cries of the girl, the ravisher had left the woman and was running away on the road which formed the entrance into the enclosure.

It is a fortunate thing for the ends of justice, that the prisoner has fallen into the net, which he had laid for an innocent man, and that the infamous falsehood which it would have been under other circumstances difficult to establish against him, as by this palpable contradiction, became a patent tangible crime.

The evidence of this man, as it stood, formed the ground of commitment, and had its falsehood not become obvious, the accused would have been subjected to the penalty, for the heinous crime laid to his charge.

I sentence the prisoner to seven years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. Jackson and Dunbar.)—Mr. J. DUNBAR—The perjury alleged consisted in the prisoner's having sworn before the magistrate, that he saw Gubbur Sing in the act of ravishing his (the prisoner's) cousin, musst. Khurleecheea, and subsequently before

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the sessions judge that he had only seen him running away from the place, where the woman was lying on the ground, binding up his *dhootee*, as he ran

The prisoner denies the charge of perjury, but does not deny having made both these statements on oath. When put on his defence before the magistrate, he said that he was too confused before the sessions judge, to know what he said; but that the statement he had first made before the magistrate, is true.

It does not appear to me, that the prisoner has rendered himself legally liable to the penalties of perjury. The second statement cannot certainly be viewed as a qualification of the first, for there is a very material difference between seeing a man in the very act of committing a rape, and seeing him running away, under such circumstances. as to afford strong presumption that he had committed it; yet, the two statements, are not directly opposed, the one to the other, for they both go to support the charge of rape; and the man who sees another committing a rape, might very well also see him running away, tying up his clothes, if he had not come up in time, to secure him.

The charge of rape may possibly have been quite true, for it was sworn to by the woman, and her statement was supported by another witness; and I cannot conclude, that it was positively and absolutely false, because the sessions judge acquitted the prisoner, mainly, as he admits, because Pershad Kahar had varied in his statements. In this view, the variance in the two statements of Pershad Kahar, would not afford ground for charging him with perjury, whatever might be its effect in inducing the Court to discredit his evidence and the charge in support of which it had been given.

The sessions judge apparently believed both the statements made by the prisoner as a witness, to be false; but there is no evidence to prove, that either the one or the other is false; and this being the case, I do not think, that the variance in the two statements is of such a nature, as to constitute the crime of perjury.

I observed above, that the prisoner, before the magistrate pleaded confusion. This is usually not a good plea, but the sessions judges's admission, that the prisoner may have become confused by his having pressed him very closely in his examination, renders it not unreasonable in this case; it is quite possible, that the man may have got so confused, as to be unable at once to explain the cause of the variance in his two statements, and that if not thus confused, he might have given such an explanation as would have gone far to reconcile the difference.

With reference to the above remarks I would acquit the

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prisoner; but as the case is a peculiar one, I should like to have the opinion of another judge.

MR. WELBY JACKSON.—The charge is that of Perjury in making two contradictory statements on oath. The first thing necessary to prove the crime is, that the statements are contradictory. The deposition before the magistrate was, that prisoner saw the farmer committing a rape on the woman, and afterwards running away; the deposition before the sessions is, that he saw the farmer running away, tying up his *dhootee*, and the woman lying senseless. Now, these two statements are not contradictory: in the latter statement the assertion made in the former, that he saw the farmer committing the act, is omitted; but omission is not contradiction: had he said the second time, that he did not see the farmer committing the act, that would have been contradiction; but on that question being put to him, it is stated, that he gave no distinct answer. As there was no contradiction, there is no perjury of the kind charged, and I think the prisoner should be acquitted.

PRESENT:

J. R. COLVIN, ESQ., *Judge*.

PEAREE THAKOORANEE
versus
JUMBESSUR MAHAPATUR.

CUTTACK. 1853. April 13. Case of JUMBESSUR MAHAPATUR. Appeal rejected, the prisoner having been convicted of burglary in his own confessions before the police and the magistrate, supported by the fact of his pointing out the stolen property.

CRIME CHARGED.—1st count, burglary and theft of property to the value of rupees 575-13-6, from the house of the prosecutrix.—2nd count, having stolen property in his possession knowing the same to be stolen.

CRIME ESTABLISHED.—Breaking into the house of the prosecutrix and stealing property therefrom, to the value of rupees 575-13-6.

Committing Officer—Hon'ble E. Drummond, officiating magistrate of Pooree.

Tried before Mr. M S. Gilmore, sessions judge of Cuttack, on the 16th February 1853.

Remarks by the sessions judge.—It appears that on the morning of the 27th December, while the prosecutrix had gone to perform obeisance at the temple of Juggernath, her house was broken into and robbed of gold and silver ornaments and gold-mohurs to the value of rupees 575-13-6; and the prosecutrix having on her return home, found both the sudder and mofussil doors leading to her house fastened by the chains on the inner sides, she called one of her neighbours, who scaled the wall and opened them; and on entering, she

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discovered that the door of her house had been forced, and her boxes broken open and robbed of their contents. Information was then given at the thannah and the darogah and other police officers proceeded to the spot, and on the suspicion of the prosecutrix, apprehended and searched the houses of Jumbessur and others, and having found nothing in them, they went to the *akhara* to which the said prisoner was in the habit of resorting, and in a tank adjoining it found a basket which the prosecutrix claimed. They then searched the *akhara* or house and found a quantity of silver ornaments buried in an earthen vessel which the prosecutrix also identified as her property. And evening having by this time set in, the prisoner was taken to thannah and confined for the night, and the following morning he produced a quantity of gold ornaments which were buried under a tree a short distance from the *akhara*. And he subsequently confessed, both before the police and the magistrate, having committed the robbery in company with certain others.

Before the magistrate he made two confessions, the first on the 29th December, in which he stated that he alone committed the robbery, and the second, on the 3rd January, in which he stated, that he committed it in consultation and in company with certain others, owners or proprietors of the *akhara* where the pròperty was found.

Before this Court he pleaded "*not guilty*," but on being called on for his defence at the conclusion of the trial, he admitted, that he accompanied the others to commit the robbery; but stated, that the others stole the ornaments and not he. He further stated, that the police darogah, and his accomplices tutored him to say he alone committed the robbery. And from the circumstances of the case, there is little doubt that he was at all events so tutored by his companions.

The confessions of the prisoner were severally proved to have been voluntarily made, though the evidence of two of the witnesses to the mofussil confession did not exactly correspond with the said confession.

The law officer convicts the prisoner, Jumbessur Mahapatur, of breaking into the house of the prosecutrix and stealing property therefrom to the value of rupees 575-13-6, and concurring in the verdict, I sentence him to seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—There is nothing in the prisoner's long appeal petition which shakes the evidence against him, consisting of his own confessions, (one of them being a second one, given to the magistrate in person, five days after his first confession to that officer,) supported by the fact, which is well proved by the

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attesting witnesses, of his having himself pointed out the place of concealment of part of the stolen property, and given it up. I do not, indeed, find that the prisoner said in his statement at the conclusion of the trial that "he accompanied *others to commit the robbery*." But upon the whole record there can be no reasonable doubt of his guilt.

The conviction and sentence are confirmed.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

RAM NREE SING AND GOVERNMENT
versus
RAMLOLL BISWAS (No. 29), RAMLOLL MUNDUL (No. 30), MANNICK BARRICK (No. 31), NUDDEE MUNDUL (No. 32), AND MOHANUND BARRICK (No. 33).

MOORSHEDABAD.

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Case of RAMLOLL BISWAS and others.

Conviction of river dacoity upheld in appeal, but sentence reduced. One prisoner acquitted for want of evidence.

CRIME CHARGED.—1st count, having committed a dacoity in the boat of Ram Nree Sing Mundul, from which property to the value of Rs. 26 was plundered; 2nd count, receiving and possessing property acquired by the said dacoity.

CRIME ESTABLISHED.—River dacoity.

Committing Officer—Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad on the 13th January 1853.

Remarks by the sessions judge.—On the 13th October last, the prosecutor was conveying some paddy, &c., on board a boat. At night he anchored his boat at a place called Kaleetollah. At 3 o'clock A. M. some one called out, it was morning, and desired the boatmen to put off the boat, and when it was only half a mile off, about eight or nine dacoits came in a small boat and robbed the prosecutor of all the property in his boat.. The prosecutor at the time recognised the prisoner Manick, and at his request the Chowkeedar of the place searched after the plundered paddy, &c., and the dacoits. They stopped a boat laden with paddy which the prosecutor recognised and in which was Manick, one of the prisoners, who took the boat off, but a little after returned, when all the prisoners, excepting Mohanund, were taken up and made over by the chowkeedar to the thannah. They confessed their having committed the dacoity, and on searching their houses the stolen paddy belonging to the prosecutor was found, part buried under ground and part under water. The prisoners, Ramloll Biswas, Ramloll Mundul, Mannick Barrick and Nuddee Mundul denied

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the charge in this court, and attributed their apprehension to an ill-feeling between themselves and the chowkeedar, but their statements were not entitled to credit. Their confessions before the magistrate as well as at the thannah, were proved by the attesting witnesses to have been given voluntarily. The prisoner Mohanund did not confess either in the Mofussil, before the magistrate, or in this court, but there was no doubt of his participation in the crime. He is brother of the prisoner Manick, and was implicated by the other dacoits on their confessions, and a portion of the plundered property was found in his possession, and he was absent for some time after the occurrence. I convicted the prisoners of dacoity and sentenced them as stated in the proper column. *Sentence passed by the lower court.*—Ten years' imprisonment each with labour and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.,).—The prosecutor followed the boat on which the prisoners came and plundered his boat of the grain which was carried off. The chowkeedar, Ramtonoo, was informed on the spot and, with prosecutor, went to the *ghat*, saw the dacoits go away with their boat, on which they returned with grass at 12 o'clock the following day. Grain was traced from it to the house of Poreish, not apprehended. Ramtonoo recognised the voice of No. 31, who, as well as the other prisoners, reside in the village Kaleetollah, of which he is the chowkeedar. The prisoners Nos. 29, 30 and 31, confessed to the police and before the magistrate: No. 32 before the magistrate only. Bags of grain were found in their houses and tanks, which some witnesses swear belong to prosecutor. The recognition of grain is not very satisfactory; but the confessions of the prisoners and their production of the property, which is strong circumstantial proof against them, leave little doubt of their guilt. The case is one of simple dacoity to which the prisoners were urged, as they say, by hunger. I sentence them to (7) seven years' imprisonment with irons and labour, in the zillah jail. The prisoner No. 33, did not confess nor was any property found on him. He was named by the prisoners; but that is not legal and sufficient evidence for conviction. He is acquitted

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT PLEADER, BEHAREE RAE AND SOOPUN RAE.

versus

ZALUM RAE (No. 1, APPELLANT), AND DHUYJOO RAE (No. 2.)

SARUN.

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Case of ZALUM and another.

Conviction and sentence affirmed in rejection of appeal.

CRIME CHARGED.—Nos. 1 and 2,—1st count, affray attended with the wounding of Beharee Rae; 2nd count, aiding and abetting in the above—No. 2, 3rd count, arson.

CRIME ESTABLISHED.—Nos. 1 and 2, affray attended with the wounding of Beharee Rae.

Committing Officer—Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 29th November 1852.

Remarks by the sessions judge.—This is the confirmation of a case of affray with wounding, tried here on the 10th March and 7th April last, and the following is the account given of the affair in the statements forwarded (with my letter No. 132 of the 23rd June 1852,) to the Nizamut Adawlut for the first named month.

"The riot charged against this prisoner, took place under the following circumstances:—a person named Foujdar Rae, having obtained a decree against the prisoner, and some twenty-one other parties, sued out execution of it, and in so doing attached a field of cane, (amongst other property) belonging to him, upon which he with other persons set upon and beat the prosecutor, who, being a servant of Foujdars, had gone with the peadahs, &c., to attach the property, and beat him with a *lattee*, whilst Surn Rae (fled) cut one of the peadahs with a sword; after this the prisoner set fire to his own cane field, and destroyed part of it, and some of the other rioters set fire to their own houses, and burnt down the villages." Both these prisoners were named from the first as having taken part in the affray, but they have hitherto kept out of the way and have only now been taken; they both deny their guilt and plead absence, (*alibis*) but there is full proof against them both and, as the moulvee also convicts them, they have in concurrence with his *futwa* been convicted and sentenced as noted above.

Sentence passed by the lower court.—Nos. 1 and 2, each to be imprisoned without irons, for a period of two (2,) years from 29th November 1852, and each to pay a fine of sixteen (16) rupees, in lieu of labor, on or before the 28th December next,

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Case of ZALUM and another.

or in default of payment to labor until the fine be paid, or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The witnesses recognize the prisoner *Zalum Rae* as engaged in the affray, his plea of *alibi* is not supported, I see no reason to interfere.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT PLEADER AND LALBEER THAPA

versus

DHOOKHA OPADHIA.

SARUN.

1853.

April 15.

Case of DHOOKHA OPADHIA.

Conviction and sentence affirmed in rejection of appeal.

CRIME CHARGED.—Theft of rupees 460.

CRIME ESTABLISHED.—Theft of rupees 460.

Committing Officer—Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 3rd December 1852.

Remarks by the sessions judge.—The facts of this case are briefly as follows:—a party of Napalees had come down to the Sonepore fair to sell an elephant, and had with them the sum of rupees 460 for their needful expenses; soon after they had encamped in the fair, the prisoner came near the place, and laying hold of the money which had been hidden under the bedding of one of the party, tried to make off with it, but was apprehended almost immediately, when he let it drop. He denies his guilt and says, that having come to the fair from Gorruckpore to beg, he was standing near the bedding, when the people laid hold of him, and accused him of the theft; but there is the fullest proof of his guilt. Wherefore he has in concurrence with the *futwa* been convicted and sentenced for it.

Sentence passed by the lower court.—To be imprisoned with labor in irons, for a period of four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I see no reason to interfere: the prisoner *Dhookha, Oopadhia* was caught in the act of stealing a bag of money at the Sonepore fair, and there is no reason to doubt the evidence.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT PLEADER AND BEHAREE SINGH

versus

MUSSUMAT JUGESEREE (No. 32), AND MUSSUMAT LUCHMUNIA, (APPELLANT, No. 33.)

SARUN.

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Case of MUSST. LUCHMUNIA and another.

The prisoner was acquitted on appeal by the Nizamut Adawlut, for want of proof that she knew the property, with the receipt of which she was charged, to have been stolen

CRIME CHARGED.--No. 32 theft of property valued at rupees 284-12, Nos. 33 and 34,* having in their possession stolen property knowing it to have been stolen.

CRIME ESTABLISHED.--No. 32, theft of property valued at rupees 284-12, Nos. 33 and 34, having in their possession property knowing it to have been stolen.

Committing Officer—Mr. R. J. Richardson officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 19th January 1853.

Remarks by the sessions judge.—The thefts charged in this and the following case† appear to have both been committed by the prisoner Jugeseree, though it was not until she was taken in the very act of committing the second case, that any suspicion arose of her having been engaged in the other also. No report was made by Beharee of his house having been robbed, but when the prisoner was taken, with the property she had stolen from Rumoo Rae, she confessed to the police that she had been engaged in the other case also, and took people with her to her sister-in-law's house, where the greater part of the things stolen from Beharee were found. To the magistrate also she repeated her confession, but on her trial at the sessions, she denies it and states, that the ornaments found had been given her by the prosecutor, with whom she had lived sometime, and that she had herself made up the clothes which were found with her. She calls no witnesses, however, to this defence, and there is no reason to believe her story true. Luchmunia again, both at the thannah and to the magistrate,

* Acquitted by the sessions judge.

† *Remarks by the sessions judge in the case of Mussumat Jugeseree.*

This is the case alluded to in the former one in which the prisoner Jugeseree was caught in the very act of stealing from the house of the prisoner Rumoo Rae. In this case also when taken, she confessed her guilt, both to the police and before the magistrate, though here again she denies it and says, that both the prosecutors are relatives and have jointly got up the charges against her. There is, however, no reason to believe this, and there is in my mind no doubt of her guilt. The moulvee convicts her on both charges and concurring in his futwa I have for the two different offences sentenced her to 3 years' imprisonment with labour suited to her sex.

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said that Jugeseree brought the thing to her house, saying, that she had got them from her "*nanee*" (maternal grand-mother) who had died; but she admits in a manner, that she suspected something wrong, and it is hardly possible that she could have believed this story. The third prisoner, Ajnussia, denies her guilt, and as nothing of any value was found with her, I concur with the moulvee that there are not sufficient grounds in her case for a conviction, and she has accordingly been released. The moulvee convicts both the other prisoners and concurring also with him in this opinion, I have sentenced Luchmunia in this case, on strong suspicion of being in possession of stolen property knowing it to be stolen, to be imprisoned for 18 months, whilst Jugeseree's sentence will be found in the following case, in which she alone is implicated.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—There is no proof that Mussumat *Luchmunia*, knew that the ornaments she received from Mussumat Jugeseree were stolen. She says that she and others saw Juggeseree openly wearing the ornaments; and as she was her sister-in-law, she did not object to take charge of them for her. As soon as the report of the theft was known, she gave them up. Ajnussia gave the same account in her defence, and Luchmunia might, if she pleased, have called her as a witness. I acquit Mussumat *Luchmunia* and direct her release.

PRESENT:

SIR R. BARLOW, BART., *Judge*.

GOVERNMENT AND MUDHOOSUDDUN HOLDAR

versus

NEEL CHUNDER MOOKERJEA, (No. 1,) KALLACHAND PATTRA (No. 2,) AND KALLY MULLICK (No. 3.)

24-Pergunnahs. 1853. April 15. Case of Neelchunder Mookerjea and others. Conviction of dacoity and sentence upheld as to two of the prisoners. The third acquitted for want of proof.

CRIME CHARGED.—Dacoity and plunder of property valued at Company's rupees 71-1½.

CRIME ESTABLISHED.—Dacoity,

Committing Officer—Mr. E. Jenkins, magistrate of Howrah, 24-Pergunnahs.

Tried before Mr. J. H. Patton, officiating additional sessions judge of 24-Pergunnahs, on the 2nd February 1853.

Remarks by the officiating additional sessions judge.—The prosecutor lives at Ishapore in the thannah of Sulkea, and on the night of the 14th of October last, his house was attacked by a gang of dacoits, and rupees' 71 worth of property, or as he stated before me rupees 200, were carried of. It appears

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that a man called Chundra Moochee had, during the previous afternoon, given notice to the police who were stationed at the neighbouring *pharee* of Beloor, that the dacoity would take place, but his information was not committed to writing. The acting jemadar sent word to the darogah that the dacoity would take place, and he himself collected a number of chowkedars and proceeded towards the scene of crime, but as it began to rain, he remained at the house of a prostitute until the dacoits attacked the house. He arrived, however, at the house before all the dacoits had escaped, and his party caught two of them inside the house and killed one of them on the spot and wounded and captured the other, *viz.*, the prisoner No. 1, whose house is close to that of the informer, Chundra Moochee, and half a coss from that of the prosecutor. A third man was also killed. Neelchunder Mookerjea No. 1, is maimed for life in his right hand, and his left is also injured. I counted sixteen marks of wounds on his body. The darogah did not go forth when he heard that the dacoity would take place, but he went after he heard it had taken place, and the next day he took the deposition of the wounded man who implicated the prisoner No. 2, who lives about a coss off at a place called Nulloa, and who had a fresh sword cut on his back when he was apprehended; he states that he fell on some potsherds; but no witness saw him do so. There is no direct evidence against the prisoner No. 3, except that of the informer who states, that he was one of the dacoits, but he did not say so during 16 days after the dacoity, and his evidence is worthless. The prisoner was apprehended on the 26th of October, as he had wounds on his person, and he made a confession before the police, but he withdrew it when he was brought before the magistrate; he accounts for his wounds by saying, that he fell from a tree, but his witnesses only heard that he did so, and his confession before the police could not alone be trusted as it was withdrawn so soon afterwards. The wounds cause great suspicion; they appear to be three sword cuts. The prisoner had been hiding in his house, and when he was asked for, it was said that he was not at home, and he lives in the same village as Kallachand No. 2, who has been convicted. There was no witness mentioned in the calendar who had seen the dacoity, except the police, and although I called three other men who live near the house of the prosecutor, yet none of them saw any dacoits; they only heard the noise and saw the light; yet it is said that the dacoits had time to plunder the premises. I am, however, of opinion, that the house was attacked by dacoits and that it was plundered. The suspicion against the two men, Nos. 2 and 3, is so strong that I think it amounts to violent pre-

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sumption of guilt. The case is this :—Two men living in the same village had each been wounded apparently with a sword. One of them was said by a prisoner who was caught on the spot to have been engaged in the dacoity, and the other was concealing himself and confessed before the police, and neither could bring any witness to show how he had received the wounds.

Sentence passed by the lower court.--Each, seven (7) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow, Bart.)--The prisoner No. 1, Neelchunder Mookerjea says, in his answer before the session's judge, that he got a farm of two gardens from Ramnarain Mookerjea at rupees 250, he was purchaser at a sale in execution of decree. Ramchurn Chatterjea, the former proprietor, who is father-in-law of Soonamonee, set up Tarneechurn Chatterjea as a Mokurrureedar and Soonamonee's people ousted him, the prisoner; Ramnarain sued the ryots summarily and Tarneechurn appeared as claimant in that case, and Koochil and Pran, chowkeedars, gave evidence in it.

Torab Biswas on part of Soonamonee also laid information against a servant of prisoner and of Ramnarain, charging him with having made away with some person. Process was issued against the prisoner and the person said to have been lost settled with the prosecutor Torab. He further adds, that the police are in the interest of Soonamonee, and that Roopun Singh and others, her servants, seized him as he was going down to engage a boat, carried him off to the prosecutor's, when and where a dacoity took place, and the police officers cut him down and wounded him in several places.

This is of itself a very improbable story, and the prisoner has given no proof whatever of his defence. Neither the account of enmity about the farm, nor the cases alluded to, are proved. The attempt before the magistrate to show that Issore, the prisoner's servant, witnessed his deportation by Roopun and others, failed; the evidence made no such deposition ; in his second answer taken some two months after the first, he named others to prove the fact, those that are entered in the calendar. Before the police, on his first being apprehended, he said he was on his return from Calcutta to Beloor and was seized by the above named, but no one was witness to it. The prisoner was found nearly dead by the police in prosecutor's house ; he named the prisoner No. 2, and others as the dacoits, and amongst them Koochil, one of the killed. Another dacoit, name not known, was also killed on the spot by the jemadar and chowkeedars, who were on the watch and attacked the dacoits, having had previous intimation that a robbery was to

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take place that night from Chunder Moochee, who was engaged to be one of the party.

Prisoner No. 2 was found with a severe sword cut, as deposed to by the medical officer, when apprehended, he said, he had, in dragging a boat the rope of which broke, fallen upon some earthen pots and cut himself, his witnesses in the defence give him a good character. The circumstances under which he was found and seized, give rise to great suspicion; the nature of the wound too as described by the medical officer, renders it very improbable that the injury he sustained, is the result of the accident to which it is ascribed, but there is not that degree of proof adduced against the prisoner which would justify a conviction; he is acquitted and released.

Prisoner No. 3, pleads before the sessions court, that he fell from a tree upon some broken pieces of earthen pots; in the Mofussil he made a confession in great detail of the facts of the case, and described how he had received the wounds. The medical officer shews he had three severe sword cuts on his back; his confession in the Mofussil was taken on his apprehension twelve days after the dacoity. The confession with the wounds, and the prisoner being unable to prove his plea, or to account for these severe sword cuts, lead to the presumption that he too was of the party.

I convict the prisoners Nos. 1 and 3, of dacoity, and confirm the sentence passed on them by the sessions judge. The prisoner No. 2, for the reasons above stated is acquitted.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

GOVERNMENT

versus

SUKAREE MOONIA (No. 2), SOWDHAN RAI (No. 3), POHLOO AHIR (No. 4), NUTTOO AHIR (No. 5), RASHUN RAI (No. 6), AND DURBIJA RAI (No. 7).

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Sentence reduced to three years in a case of culpable homicide in which a man supposed to be a thief was severely beaten by the prisoners and subsequently found dead.

CRIME CHARGED.—Wilful murder of a person, name and residence unknown, under pretence of his being a thief.

CRIME ESTABLISHED.--Culpable homicide of a man, name unknown.

Committing Officer—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 15th February 1853.

Remarks by the sessions judge—This is a serious case of thief-killing in which each and all of the prisoners sent up for trial are clearly shewn to have taken part. Indeed, most of them in a manner admit that they were engaged in it as whilst denying their own share, they criminate and accuse their fellow prisoners of, the crime. It appears that an alarm was given, that there was a thief lurking about the village, (some of the prisoners say, that they heard two men talking,) when Sukaree and others went to look for him, and brought back one man who, being taken into the house of the prisoner Durbija No. 7, was there so beaten and ill used by all the prisoners that it is supposed that he died there and then. None of the witnesses can speak to the time of his death, and all that is proved is, that all the prisoners were seen beating and maltreating him near Durbija's house, and that the next morning his dead body was found (naked) in a tope at a little distance off. The civil surgeon deposes that the man's body had various marks of ill-usage, and that the neck appeared to have been pressed; but there is no knowing by whom the injury was inflicted, or who took the more active part in mal-treating the man. There is no proof on the one hand that the man really was a thief; but on the other again (as he was quite unknown) there could have been no motive on the part of the prisoners to kill him; still as it is clearly shewn that they all took part in beating, and thereby causing death of an unresisting man, I cannot but think, with the moulvee (who convicts them all on violent presumption of culpable homicide) that they are all responsible for his death, wherefore I have, in concurrence with the *futwa*, convicted them of culpable homicide, and have sentenced them for it as noted in the preceding column.

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Sentence passed by the lower court.—To be imprisoned for a period of seven (7) years, each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—It seems that Sukaree, prisoner, saw a man near the village in an *urhur* field and naked, under suspicious circumstances; he therefore called out thief and caught him: the man was a stranger and the villagers collected and beat him and tied him: Sukaree and the other prisoners took an active part in the beating; the people then said let him go, but he was almost in a dying state and asked for water; next morning he was found dead in the road. There is no doubt the deceased was tied and beaten severely by the accused, but there is no positive proof that he died from the beating: I should be disposed to presume this, but for the surgeon's evidence, which attributes the death to strangulation. Now there is no direct evidence that the prisoners applied any ligature to his neck, indeed it seems that when they let him go he was not actually dead. It is most probable that some ligature was applied, but this was not observed in the scuffle. I see no reason to interfere with the conviction, but reduce the sentence to three years imprisonment, with labor and irons, commutable to a fine of 200 rupees each.

PRESENT:

W. B. JACKSON, Esq *Judge.*

GOVERNMENT AND BUDUN DASSEE, FOR KURPAMOYEE DEBEA.

versus

GUNNEE MUNDUL (No. 1), SURBAZ MUNDUL (No. 2), AMARDA MUNDUL (No. 3), RAMCHUNDER SIRCAR (No. 4 APPELLANT), AND DANUN NUSSOO (No. 5).

DINAGEPORE. 1853. April 16. Case of RAMCHUNDER SIRCAR (appellant), and others. Conviction and sentence affirmed in rejection of appeal.

CRIME CHARGED,—Nos. 1 to 4, 1st count, theft and, 2nd count, receiving and having in their possession property obtained by theft, knowing the same to be such, and No. 5, 1st count, theft and, 2nd count, privity to theft.

CRIME ESTABLISHED.—Nos. 1 to 4.—Having in their possession property obtained by theft knowing the same to be such, and No 5, privity to theft.

Committing Officer—Mr. A. G. Macdonald, joint magistrate of Maldah.

Tried before Mr. James Grant, sessions judge of Dinagepore, on the 7th December 1852.

Remarks by the sessions judge.—On the night of the 7th September 1852, property valued at rupees 448-15-0, was stolen

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from the house of Kurpamoyee, whose gomashta or *paramour* next day reported, that only 7 rupees worth has been stolen and that there was no ground for suspicion against any person. Nearly a month afterwards an apparently disappointed accomplice gave information to a zemindar's gomashta and a police burkundauz, when a part of the stolen property, brass pots, &c. valued at 32 rupees was found on the prisoners Nos. 1, 2 and 3, who confessed in the mofussil and foujdaree. Property was also found on No. 4, and No. 5 confessed in the foujdaree to having gone in a boat with the other prisoners and remained there until they returned with the stolen property. From the confessions of Nos. 1, 2 and 3, it is clear that either the prisoner No. 4, or the *paramour*, gomashta, who absconded, made away with the gold and silver ornaments. The jury convicted the prisoners and I concurred.

Sentence passed by the lower court.—Nos. 1 and 4, each to (5) five years, and Nos. 2 and 3 each to (3) three years', imprisonment with labor in irons; and No. 5, without irons for six (6) months, and to pay a fine of (10) ten rupees within one month, or in default of payment, to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson,)—I see no reason to interfere with the sentence on Ramchunder; the stolen property was found on him and recognized by the prosecutor and his witnesses. The prisoner claims it as his own, but the witnesses cited in proof of this deny all knowledge of it.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT,

versus

GUNGARAM SING (No. 2), SHEIK MEEAJAN (No. 3), SHEIK KHAN MAHOMED (No. 4), SHEIK JAROOLLAH (No. 5), MAHOMED SULLEEM (No. 6), KALLOO KHAN (No. 7), ENAET KHAN (No, 8), MAHOMED MONEER (No. 9), ZUMEEROODDEEN KHAN (No. 10), AND MEER IKRAM HOSSEIN (No. 11).

MYMENSING.

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The evidence for the defence being unsatisfactory, the court affirmed the conviction and sentence of the sessions judge who had personally examined the witnesses for the prosecution.

CRIME CHARGED.—1st count, Nos. 2 to 9, mutual affray in which Runjeet Doss and Ainuddeen, *alias* Anoardee were killed, and Dhon Gazee severely wounded; 2nd count, Nos. 10 and 11, accomplices in the said affray; 3rd count, Nos. 10 and 11, ordering the above affray; and 4th count, Nos. 10 and 11, accessaries before and after the fact of the above affray.

CRIME ESTABLISHED.—Nos. 2 to 9.—Mutual affray in which Runjeet Doss and Ainuddeen, *alias* Anoardee were killed, and Dhon Gazee severely wounded, and Nos. 10 and 11, accessaries before and after the fact of the above affray.

Committing Officer—A. Abercrombie, officiating magistrate of Mymensing.

Tried before Mr. R. E. Cunliffe, sessions judge of Mymensing, on the 7th July 1852.

Remarks by the sessions judge.—From the evidence of the witnesses, the defence of the prisoners, and *ten other criminal* cases cited as evidence by them, which were sent for and examined, it appears that soon after the marriage of prisoner No. 10, with one of the daughters of Nufoo Beebee, disputes arose between him and No. 9, a grandson of Nufoo Beebee, and No. 7, also her relative, in which they were aided by No. 11, (who shortly before this occurrence took a farm of her property) regarding the house and talooks of Nufoo Beebee, and it is alleged by this party, that Nufoo Beebee afterwards gave portions of her house and property by deed of gift to No. 9 and two of her daughters; and No. 10, declaring the lease and deeds of gift to be fictitious, numerous complaints were before made charging each other with being about to commit an affray, assault, &c., &c., and on three or four occasions the police have been deputed to keep the peace, the former magistrate knowing the character of the parties. On the 2nd of January intimation on the part of Nufoo Beebee was given to the police that an attack was expected, and a *burkundauz was again deputed and arrived* two *days before the occurrence*

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and reported that people were collecting, on which *another burkundauz was sent* and *the day after his arrival, early in the morning* they were told No. 11's people were coming and soon saw a large body of men come *towards Nufoo Beebee's house*, and on getting it, 40 or 50 men came out of it, and the two parties in spite of them began to fight, when Dhon Gazee and Ainuddeen were severely wounded, the former is still in hospital, and the latter died there from the effects of his wounds. The burkundauzes took the wounded men who had come out of Nufoo Beebee's house into it and afterwards to the thannah. They appear not to have seen Runjeet Doss struck, but as they were about to start for the thannah, they were told by the people that a man had been killed and carried off. *Both parties claim Dhon Gazee and Ainuddeen as their servants*, who were in charge of the house and unjustly attacked. No. 11, and his party, also claim Runjeet Doss as No. 9's servant in charge of the house, and allege that his body instead of being brought into Nufoo Beebee's house as his wounded fellow-servants were, was taken by the chowkeedars to the house of Mahomed Huneef, a person greatly mixed up in these disputes on the part of Nos. 11 and 9, from fear of No. 10's party who had gone into Nufoo Beebee's house, which is false, as the burkundauzes declare the parties dispersed or went off immediately after the fight, and that No. 10's people did not go into the house; besides which no charge of plunder or cause for having done so is assigned, and there can be little doubt but that Runjeet Doss was one of No. 11's party, otherwise Mahomed Huneef's ryots would not have taken the body to his house; on the contrary that would have been the last place they would have taken it to, lest he should be implicated in the affray. On the part of No. 10 and his party, it is attempted to make it be believed that the body of a pilgrim who had died of cholera had been carried off, and the wounds inflicted after death; but the evidence of the civil surgeon shews not only that they were inflicted during life, but that they were the cause of death. There is a large number of eye-witnesses, some of whom charge one and some the other party, according as they may be connected with them, as being the criminal parties, and, as is always the case in such cases, the facts stated are in some respects exaggerated, such as Nos. 10 and 11, heading and leading on their respective parties, which, exclusive of the evidence adduced for their defence, I consider improbable from their station in life, and being then under recognizances of rupees 1,000 each, which have been confiscated and paid. The defence of the prisoners is besides enmity with the opposite party, an *alibi*, which, with the exception of Nos. 10 and

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11, I agreed with the law officer, was not proved. He convicts all the prisoners, except Nos. 10 and 11, with affray, in which Runjeet Doss and Ainuddeen were killed, and Dhon Gazee severely wounded, and Nos. 10 and 11 of being accessaries before and after the fact of the affray, in which I concurred, for such an occurrence could not have occurred without their knowledge and direction, nor a body of 40 or 50 men collected in Nufoo Beebee's house, or the body which came to attack them, without their knowledge.

Resolution of the Presidency Court of Nizamut Adawlut, No. 1491, *dated* 26*th October* 1852, (Present: Sir R. Barlow). The court, having perused the papers connected with the case above-mentioned, observe, that the record as now before them, is very deficient on points of great importance. Both the parties, who have been committed to the sessions, claim from Nufoo Beebee: Mahomed Moneer under a *hibbah* from her, and Zumeeroodeen under the title of joint possession with her, he having married her daughter Kalit Jan. It was highly expedient to have the evidence of Nufoo Beebee on the record to establish in whom she, the original proprietor of the estate and of the cutcherry attached, considered the right to be vested, and with whom the possession *bona fide* was at the time of the affray. Application was repeatedly made for her examination, but no steps were taken to secure her evidence, which must be most valuable.

Again, the fact of possession which each party claims to have established, is by no means satisfactorily shewn by either party, further than that their respective witnesses have sworn to it. Two thannah burkundauzes were at the cutcherry for some days previous to the affray; they might reasonably be expected to give depositions, which might be relied on, on the fact of previous possession, but they do not; they are unable to recognise any of the assailants; they speak of them only as of the party of Mahomed Moneer and Ikram Hossein. Now, it was the duty of the magistrate under the peculiar circumstances fully to have proved by evidence, other than that of dependents and retainers of the parties committed, who was really in possession and who was the assailant, consequently the aggressor in this serious affray; such evidence is easily procurable and must be brought forward.

An attempt, also, properly directed to establish to which of the parties Dhon Gazee really belongs, would greatly have aided in the developement of the circumstances of the case. The corpse of Ainuddeen is claimed by Zumeeroodeen and his party, and Dhon Gazee is said to be the servant of Nufoo Beebee also. Mahomed Moneer and his party claim the corpses of Ainuddeen and Runjeet, both killed in the

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affray, and state Dhon Gazee is their servant. Dhon Gazee in the thannah and before the magistrate said, he was servant of Nufoo Beebee or Zumeerooddeen's party. On the 10th February 1852, he subsequently presented a petition to the magistrate, stating his brother Ainuddeen had been killed by Zumeerooddeen's party and himself wounded, and that they were both servants of Mahomed Moneer.

After going through the entire record, in which no less than 182 witnesses' names are to be found, and almost the whole of them have been examined, there is no certain data on which the court can rely, in order to guide them to a just decision of the case. The points, in which the evidence is held to be defective, are indicated in the court's remarks for the information of the local authorities.

Reply of the officiating sessions judge.—(Mr. W. T. Trotter,) No. 2, dated 23rd February 1853.—As directed in the resolution of the Court of Nizamut Adawlut, No. 1491, dated the 26th October last, I have now the honor to submit for the orders of the court, the proceedings of the trial, together with the magistrate's record of commitment and the proceedings in the Act IV. of 1840 case, as requested in your letter, No. 1559, of the 25th November last.

Immediately on the receipt of the court's resolution, the former judge directed the magistrate to procure the attendance of Nufoo Beebee, and also to obtain the best evidence as to which party really was in possession of the property which led to this serious affray, and also to ascertain to which of the parties Dhon Gazee and his brother Ainuddeen belonged.

The evidence of Nufoo Beebee has now been taken by me, as well as that of others unconnected with either of the parties, and the prisoners were allowed to be present at the trial and to make a fresh defence.

Nine witnesses were sent in by the magistrate, who all depose to the property having been in the possession of Nufoo Beebee at the time of the affray, but they knew nothing of any part of the same having been given away by deed of gift to Mahomed Moneer &c., or of its having been farmed to Meer Ikram Hossein. They also state that Dhon Gazee and Ainuddeen were Nufoo Beebee's servants, and that the origin of the dispute was owing to Nufoo Beebee having entrusted the management of her affairs to her son-in-law, Zumeerooddeen Khan, and not to her grandson &c., and to obtain which the latter party sided with Meer Ikram Hossein.

Nufoo Beebee appeared in a palanquin, and was identified by both her son-in-law and grandson. Her evidence was taken

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by me on solemn declaration, and she distinctly deposed to the property being her own; that she had always been in possession both at the time that the affray took place and before it, and that she neither gave the property away to any one under a *hibbah* or farmed it out, and that the dispute arose on account of her having entrusted the management of her affairs to her son-in-law which created a jealousy amongst her other relations.

No new defence was set up on the part of Zumeeroodden Khan and others, but the opposite party, *viz.*, Meer Ikram Hossein, Kalloo Khan, and Mahomed Moneer &c., state that, owing to Zumeeroodden Khan having confined Nufoo Beebee in his own house he induced her to give evidence in his favor; but the lady herself deposed before me that she went to her son-in-law's house of her own accord to visit her daughter who was ill at the time, and that she is still residing with her. They named a great number of witnesses and amongst others two European gentlemen; but none of the evidence was direct as to the fact of possession on their part, but merely hearsay.

The court directed, I beg to state, on a summary appeal from Nufoo Beebee, that her evidence should be taken by commission; but she appeared herself prior to the receipt of the court's orders, and I may state that she came without prejudice to her rank in a palanquin, and which was perfectly satisfactory to her relations.

As the trial was originally held by Mr. Cunliffe, with the assistance of the law officer, he was present at my request during this enquiry also, it having been my intention to have called for a fresh *futwa*, had any new features presented themselves with regard to the crime charged; but as this did not appear to be the case, I did not think it necessary to do so, more especially so as the case is pending in appeal before the higher court.

From the evidence now taken, as well as from the proceedings in the Act IV case decided in appeal before the former judge, the court will observe that the property in dispute was in possession of Nufoo Beebee at the time of the affray.

There has been, I regret to say, considerable delay in concluding the present enquiry; but it was unavoidable, owing to the papers having only reached this office from the sudder court on the 4th December last, and to the reluctance at first of Nufoo Beebee to attend to give evidence in the case, and also to the number of witnesses named by the prisoners.

Sentence passed by the lower court.—Nos. 2, 3, 4, 5, 6, 8 and 9, each, seven years' imprisonment with labor and irons. No. 7, the same period but without labor or irons. Nos. 10 and 11

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each four years' imprisonment without irons and a fine of 1,000 rupees or labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoners Nos. 2 to 9 are charged with mutual affray in which Runjeet Doss and Ainuddeen were killed, and Dhon Gazee was severely wounded.

Prisoners 10 and 11 as accessaries before and after the fact.

The case has been before the court for five days, and was, on the 26th October last, returned to the sessions judge with instructions to make further enquiries into the points indicated. It has now come back, and the pleaders for the parties charged, as well as the Government pleaders for the prosecution have again been heard.

From the record it appears that Mahomed Moneer, Ikram Hossein and others and their adherents on the one side, and Zumeeroodeen and others, his people, on the other, both parties being relations or connections of Nufoo Beebee, have disputes about her property—while the former claims it under deeds of gift, the latter puts forward a plea that he is her manager. Numerous complaints have been lodged in the foujdaree courts, and two proceedings under Act IV. of 1840, have been decided by the magistrates of the district. In the first, of August 1850, Mr. R. Raikes decreed a portion which formed the subject of the suit, in favor of Mahomed Moneer's party, exparte. In the second, which is founded on an order also issued by Mr. Raikes in February 1852, another magistrate, Mr. Abercrombie, gave a decision in favor of the claims preferred by Zumeeroodeen with reservation of the portion awarded by Mr. Raikes to Mahomed Moneer; this order was upheld in appeal by Mr. Cunliffe, the sessions judge. The same officer passed sentence upon the prisoners in this case on the 7th July 1852. An appeal was laid against his order, hence the subsequent investigation ordered by this court and the return made by Mr. Trotter, the present officiating sessions judge, on the 23rd February last.

The calendar of this case contains the names of 180 witnesses, who, with a very few exceptions, have been examined in behalf of the prosecution and of the prisoners. I have endeavoured by calling for proofs of possession, to establish which of the parties was actually occupant of the house when the house was attacked and the two persons killed. Both parties produce receipts for payment of Government revenue signed by the collector for the years 1257 and 1258. Zumeeroodeen further puts in some receipts for 1255 to 1258. The witnesses cited by both parties swear to their possession respectively as required, and in the midst of the voluminous depositions there is no satisfactory data upon which to pronounce which party

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was in fact in possession and which the assailants. Nufoo Beebee has twice varied her statements; at one time she espoused the cause of Mahomed Moneer, in the subsequent stages of the altercation she has joined Zumeeroodddeen and his party.

Out of the immense mass of records before me, all that I can find worthy of any trust is the fact of an affray attended with murder of two persons both claimed by the parties respectively, having occurred; the civil rights of either are of no moment in this case further than to elucidate its probabilities; those rights must eventually be determined by resort to civil proceedings.

But little light however has been thrown by the further enquiry which has been made, upon the rights of either party. There are, however, the magistrate, Mr. Abercrombie's, proceedings, and those of Messrs. Cunliffe and Trotter the sessions judges which show that all the prisoners are in their opinions guilty to the extent recorded in No. 6 statement of convictions for July 1852. The prisoners 2 to 9 are convicted by the sessions judge, in concurrence with the Mahomedan law officer, of mutual affray in which Runjeet and Ainuddeen were killed. The prisoners 10 and 11 of being accessaries before and after the fact. The defence set up is *alibi*; but in my opinion the prisoners have failed to produce such evidence as can be relied on. Several of them cited 16 to 20 witnesses; one, prisoner No. 10, no less than 50 to prove *alibi*. Having gone through these depositions I find nothing that can be held to be trustworthy. In the case of prisoner No. 10, very many of the witnesses swear they saw him at home on the day of the occurrence, some of them swear he was at home the whole of that day; some that they heard he was at home. In fact all the depositions, taken of course long after the date on which the crime was committed, and after ample time had been allowed for preparing them, are of the peculiar nature on which the natives of this country invariably rely, and as invariably adduce upon occasions of necessity. Neither the magistrate, the sessions judges nor the law officer credited the evidence for the defence; those officers by personal communication with the witnesses, had the best opportunity of forming judgments as to the degree of credit attachable and due to each deponent's statement. Weighing all the circumstances of the case which have been carefully considered, I see no reason to interfere with the sessions judge's order.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

DHON GAZEE SHEIKH.

MYMENSING.

1853.

April 16.

Case of DHON GAZEE SHEIKH.

There being no ground for interfering with the sessions judge's order the appeal was rejected.

CRIME CHARGED.—Mutual affray in which Runjeet Doss and Ainuddeen, *alias* Anoardee were killed and the above, Dhon Gazee severely wounded.

CRIME ESTABLISHED.—Mutual affray in which Runjeet Doss and Ainuddeen were killed and Dhon Gazee, prisoner, wounded.

Committing Officer,—Mr. R. Alexander, officiating magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 17th January 1853.

Remarks by the officiating sessions judge.—The particulars of the case which gave rise to the affray in which this prisoner was committed as having taken a part, have been fully detailed by my predecessor in his remarks on the trial of the prisoners (Gungaram Sing and others) who were sentenced by him to various terms of imprisonment on the 7th July last. I shall therefore briefly describe the case. There had been a dispute between Meer Ikram Hossein on one side, and Zumeerooddeen Khan on the other, regarding the property of Nufoo Beebee, the mother-in-law of Zumeerooddeen Khan. On its being reported that a breach of the peace was expected between the two parties, a burkundauz was deputed by the darogah to the spot, and he was followed by another burkundauz; and on the day of the occurrence (6th January 1852) in spite of the presence of these two police officers an affray took place between the hostile parties which ended in the death of two persons, this prisoner (Dhon Gazee) being also then wounded, and he has been committed for having taken an active part in the affray: he was recognized by a number of eye-witnesses, who declare that they saw him in the affray with a *latee* in his hand, and after the fight he was found to have been wounded in the left arm. The prisoner in the thannah stated, that he and Anoardee were Nufoo Beebee's servants, and when they saw the assailants approaching they and others only remonstrated and they were consequently wounded, Anoardee having died of the wounds he received. In the foujdaree court the prisoner said, that he was a collecting peon, employed by Mahomed Moneer, but said at the thannah that he was Nufoo Beebee's servant, at the instigation of Zumeerooddeen Khan; that Zumeerooddeen Khan

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Case of DHON GAZEE SHEIKH.

and Ikram Hossein quarrelled and committed the affray, in which he and his brother Anoardee had been wounded, and that he only remonstrated when the assailants were coming towards the house he was employed to watch, &c. In the session's court the prisoner denied committing any affray or beating any one; on the contrary that he was himself wounded, and that he was Mahomed Moneer's servant. His witness (only one whom he examined) said that he was Moneer's servant. The *futwa* of the law officer convicts the prisoner of the crime charged, and declares him liable to punishment by *acoobut.* As the prisoner was recognized by a number of eye-witnesses with a *latee* in his hand as having been in the affray, which proves, that he took an active part in the same, I concurred in the *futwa.*

Sentence passed by the lower court.---To be imprisoned without irons with labor for five years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Baronet)—The prisoner was one of those wounded in the affray with murder for which Gungaram and others have been tried and convicted as noticed by the sessions judge. The prisoner was recognized on the spot, and has also been recognized since his commitment. His sentence is confirmed as his petition of appeal shows no ground for interference with the session judge's orders.

BEHAR.

1853.

April 18.

Case of NEMCHAND RUJWAR and others.

The prisoners were convicted of wilful murder by the sessions judge. The Nizamut Adawlut considered the crime proved to amount only to aggravated culpable homicide, and sentenced them to imprisonment for 14 years with labour in irons.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

WUZEER SING BHABUN, NEERMUL ROY BHABUN AND GOVERNMENT,

versus,

NEMCHAND RUJWAR (No. 1), SEWUK RUJWAR (No. 2,) AND JHUREE RUJWAR (No. 3).

CRIME CHARGED.—Theft of *dhan* valued rupees 2-8, belonging to Nowneed Roy, and articles to the amount of annas 14, belonging to Bundhoo Roy, brother of Neermul Roy, in all amounting to rupees 3-6. from Khuleehan, attended with the wilful murder of the said Bundhoo Roy.

Committing Officer,---Mr. A. G. Wilson, deputy magistrate of Nowadah, Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 7th March 1853.

Remarks by the sessions judge.—The deceased had been for several years past *burraiyl*, or overseer of Dilodha, of which place all three prisoners are resident cultivators. On the night of the 15th December last, the prosecutor Wuzeer Sing,

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a fellow *burraiyl,* was with the deceased in the same shed, in charge of their employer's grain at a spot where it was stored at some considerable distance from the village, when it was attacked by a body of some ten thieves, who first binding Rewut Rujwar (witnees No. 5,) the *budhwara,* or watchman, who like the other eye-witnesses was also passing the night in their stores of grain close by, began plundering the grain, whilst six of them made a rush at the two *burraiyls.* Both ran, Wuzeer Sing escaped, but the deceased falling,* he was so brutally beaten by his assailants as to cause his death on the 18th following.

The deceased's deposition, was taken both by the police and the deputy magistrate on the same date, the 17th idem, when he declared on both occasions, that he had not recognized any of the robbers. Both depositions are very incomplete, and were apparently given with great difficulty. Before the police he named Jeetun Quoeree (witness No. 2,) Meghooa Gwala (witness No. 3,) and Rewut Rujwar (witness No. 5,) as persons from whom enquiry should be made, and, before the deputy magistrate, ended by replying " that he was senseless then as he had been from the first." Dr. Diaper deposes that, " he had several contused wounds, and his head generally was sufficiently beaten to have caused death by that alone." There was also one " severe contused wound on the right side of the forehead, and, on dissecting away the skin, fracture of both plates of the frontal bone in that situation about 5 inches long" &c.

The prosecutor Wuzeer Sing and the eye-witnesses Nos. 1 to 4 and 6, all residents of the same village, depose to their having recognized the three prisoners and others, their relatives absconded, beating the deceased. Rewut Rujwar (witness No. 5) also recognized them as the party who had pinioned him, and he appears to be related to some of them. The witnesses generally are unable to account for the attack, except as arising out of malice, from the deceased, as an old village officer, being obnoxious to the prisoners in the discharge of his duty. The others named and absconded were also noticed visiting and drinking at Sewuk Rujwar's during the day time, and this much was acknowledged by all three prisoners before the police, at the same time that Nemchand (prisoner No. 1) and Jhuree (prisoner No. 3) insinuated, that they might have been amongst the thieves though not with their knowledge. There is also the solitary testimony of Dila Dhobee (witness No. 11.) as to his having washed a blood-

* At the thannah Wuzeer Sing described the deceased as having been pulled out of the shed by his assailants.

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stained garment belonging to Nemchand, and which Nemchand acknowledged before the deputy magistrate without much explanation.

The prisoners have always pleaded "*not guilty*" have invariably recognized the occurrence as having taken place at the hands of thieves (the common scape goats for so many hidden Indian crimes), and that they, like others, ran up at the alarm set up. Before the deputy magistrate they called witnesses in proof, who denied all knowledge of the same. Before this court, they summoned no witnesses. In the first instance they never attempted to account for their being accused, and set up the most frivolous pretences in this respect before this court, Nemchand to the effect that he was accused because he could not discover the real perpetrators, and Sewuk and Jhuree on account of trifling grudges arising out of the non-payment of petty demands.

The *futwa* of the law officer convicts all three prisoners of the "culpable homicide" of the deceased, and declares them liable to punishment for the price of blood by *deyut*.

This is no ordinary case of theft with violence, and I cannot accordingly concur with the law officer in treating it as one of "culpable homicide." As noticed by him the prisoners being cultivators of the village, tells nothing in their favor. It may be added also, that their own grain was in like manner in store, not far off. Simple theft could no more have been the main object of persons so situated than that the fatal and repeated blows on the deceased's head were those inflicted by common robbers or plunderers. Their repeated and fatal character bespeak a revengeful purpose determinately and effectually accomplished. This is also to a certain extent circumstantially corroborated. There can be little doubt that Rewut Rujwar (witness No. 5) was first pinioned. Sewuk himself voluntarily acknowledges as much before this court. The assailants therefore were masters to elect whom they should assail, and whom spare, and that they may have spared Rewut as a connection of theirs in no degree weakens the argument. I thus find strong presumption of foul violence premeditated against the helpless and defenceless deceased, whom, his assailants being unopposed, could have equally spared as an old village official, as they did their connection Rewut (witness No. 5.)

If the evidence for the prosecution is to be relied on, it shows that the murder was wilfully perpetrated, because the deceased interfered with the prisoners' pilferings, not unlikely amongst the Rujwars, one of the most unmanageable, violent class of cultivators. It also shows, and is acknowledged by all three prisoners in the first instance, that they as well as

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the accused absconded, met at Sewuk's during the day time, from which and what followed it may be again inferred that the deed was premeditatedly designed.

There are some points of a dubitive character, such as the deceased's never having named his companion Wuzeer sing, when he at least gave the name of some of the witnesses. Yet Wuzeer's evidence was the first taken by the darogah on his arrival at the spot on the 18th, the thannah being eight miles distant. The three prisoners also according to the record were not apprehended, and then in the village itself, or put on their defence till the 19th idem. Before this Court it was deposed that they were at once placed under surveillance by the village authorities, which however does not stand confirmed on reference to the Deputy Magistrate according to his proceedings of 11th February; at the same time I must observe that this point was not thoroughly sifted in the first instance, as it ought to have been, the only period most favorable to its faithful investigation. Although too the daroga's report of 19th December No. 12 records the apprehension of all three prisoners on that date, yet the *chullan* No. 21 shows that they were apprehended by Keerut Sing Burkundaze, who was appointed under a warrant of 16th December No. 16 to make preliminary enquiries prior to the wounded man's arrival at the thannah on the information of Gorahit Mungur (witness No. 10) a Rujwar also of the same village, to the effect that the deceased "had been only slightly beaten by thieves."

Such circumstances carry no weight in my mind in opposition to the evidence for the prosecution generally, when to the best of my judgment I find in such evidence, a disposition rather to suppress the whole truth than exaggerate it. The case too is totally wanting in any motive for concoction beyond that started by Nemchand alone, and then only at the last moment, before this Court *viz.*, that he was prosecuted because he could not discover the actual perpetrators. If true it is not likely he would have continued so long, and his fellow prisoners altogether, silent about it to the last.

I am unable to arrive at any other conclusion than that this is one of those not uncommon cases of agrarian outrage which so disgrace India, and which nothing but the victims life taken at the most unguarded and defenceless moment can appease. I convict the prisoners on strong presumption of the wilful murder of the deceased, and would sentence them to imprisonment for life in transportation beyond sea.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I see no reason to doubt the testimony of the witnesses in this case as to the main facts. I do not think, however,

that the general circumstances as established by the evidence are such as to warrant the conclusion that the death of Bundhoo Rae had been premeditatedly designed. Had that been the object of the prisoners and their associates the probability is, that they would have chosen a time and place more suited to their purpose. I take the evidence of the witnesses just as it is given, and they all swear to the carrying off of fifteen or twenty maunds of paddy. Now this is a labour, which could not well have been effected by four men only, while six were engaged in disposing of Rewut Rujwar and the deceased. The evidence as to past enmity and malice is weak and inconclusive; and upon the whole I am disposed to think that had Bundhoo Rae allowed himself to have been bound as Rewut did, nothing more serious would have come of it. The probability is that he resisted and that he was then beaten. The statements of the witnesses as to the particulars of the assault must be received with some caution; they all swear that they were able to see what happened by the light of the moon—but that light could not have been very bright, as a reference to the Almanac shows that the moon was then only four days old; and the chief witness, as remarked by the sessions judge, contradicted himself most palpably, in stating at the thannah that the deceased was pulled out of the shed by the assailants, and on the trial, that he was attacked by them after falling when he was running away. I convict the prisoners of aggravated culpable homicide and sentence them each to imprisonment for fourteen years with labor in irons

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PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT AND PHEDOO ROODER,

versus

RAJCHUNDER CHUCKERBUTTY (No. 1,) AND CALACHAND DOSS KUR (No. 2.)

DACCA. 1853. April 18. Case of RAJCHUNDER CHUCKERBUTTY and another.

Conviction of two prisoners in a case of riot attended with homicide, upheld in appeal.

CRIME CHARGED.—1st count, riot with culpable homicide of Surroop Chunder Rooder and wounding of Sheetul Rooder; 2nd count, accomplices in the same.

CRIME ESTABLISHED.—Being present in a riot in which Surroop Chunder Rooder was killed and Sheetul Chunder Rooder wounded.

Committing Officer—Mr. C. Mackay, principal sudder ameen of Furreedpore, exercising the powers of a magistrate.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 18th February 1853.

Remarks by the sessions judge.—The circumstances of this

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Case of RAJCHUNDER CHUCKERBUTTY and another.

case were detailed in the abstract statement of prisoners punished without reference for the month of February last, from which the following is an extract :—

" It appears that the prosecutor's brother Sheetul Chunder Rooder, in Cheyt last, purchased, jointly with Sheetul Chunder Adheekaree, some lands from one Ram Chunder, who obtained them under a deed of gift from Buddynath Chuckerbutty. The prisoners, Raj Chunder Chuckerbutty and Hurish Chunder Chuckerbutty deny the deed of gift, and claim the lands as theirs. Hence the origin of the present case. The parties appear to have come into collision in Sawun last at the cutting of the first crop after the purchase, and the grain was placed in the lands of one Bholanath pending settlement of the dispute. The question between them, however, seems to have remained unadjusted, and on the cold weather crop becoming ripe, the prisoners Nos. 1 and 2, went with a large number of men to the land, and cut it, and were carrying it off to their houses, when prosecutor's father (deceased) and brother remonstrated with them. They were immediately set upon and assaulted, and the former to so violent a degree, that he died from the effects of it five days after. The above circumstances are deposed to by a number of eye-witnesses, who also state that they saw the prisoners commit the assault on prosecutor's father and brother. The evidence of the sub-assistant surgeon goes to shew that the cause of deceased's death was the injuries he sustained from blows inflicted, as he supposes, with a *lattee*."

Three witnesses to the fact and two to the inquest have attended and been re-examined They repeat their former statements and recognise the prisoners as having been among the rioters. The original deposition of the sub-assistant surgeon who conducted the *post mortem* examination, taken down at the former trial, has been placed on the record. His removal to Patna has prevented his being re-examined. The prisoners deny the charge and plead *alibis*, but have called no witnesses in support of them.

The *futwa* of the law officer convicts the prisoners of being present in a riot in which prosecutor's father was killed and his brother wounded. In this finding I concur, and have sentenced them as described in column No 12. This trial came before the Superior Court in appeal, and the conviction and sentence of this Court were upheld by the presiding judge (Mr. Mills) on the 7th May and 11th December 1852.

Sentence passed by the lower court. Each two (2) years' imprisonment without irons, and a fine of fifteen (15) rupees or labor.

Remarks by the Nizamut Adawlut.--(Present: Mr. J. R. Colvin.)--The two prisoners were named in the earliest mofussil depositions connected with this case, but evaded apprehension till nearly thirteen months after the occurrence of the riot. Their pleas of *alibi* are quite unsupported. Their appeal is consequently dismissed.

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Case of RAJCHUNDER CHUCKERBUTTY and another.

The court observe, that they do not find on the record the original deposition of the sub-assistant surgeon, taken down at the former trial, as referred to in the remarks by the sessions judge. An explanation must be given on this point.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND BHUGOBAN CHUNG MATOO

TARA CHAND MATA (No. 1), AND MUSST. GOURMONEE BUSHTOBY (No. 2).

BACKERGUNGE.

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Case of TARA CHAND MATA and another.

One of the prisoners was acquitted, her guilty knowledge not being proved. The conviction of the other for child stealing was upheld.

CRIME CHARGED.- 1st count, No. 1, burglariously stealing Nitaye, the son of the prosecutor; 2nd count, No. 2, purchasing the boy Nitaye, knowing him to have been stolen, and 3rd count, No. 2, purchasing the boy Nitaye.

CRIME ESTABLISHED.—No. 1, burglariously stealing a child named Nitaye, and No. 2, purchasing a child named Nitaye knowing him to have been stolen.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, officiating sessions judge of Backergunge, on the 13th January 1853.

Remarks by the officiating sessions judge.—The child Nitaye, who is an infant in arms, slept on the 22nd October with its parents. It was not missed till nearly the dawn of the next morning. Search was made for it round the premises, but without success. From the *jhaup* being open, and the ground in the door way indicating the recent tread of a man, the parents suspected that their child had been carried off by some person in order to sell him. Suspicion fell upon the prisoner Tara, owing to his bad character and on other grounds, and on his apprehension by the police, he confessed that he carried off the child and sold him to the other prisoner for 50 rupees, of which he had been paid in cash 20. This confession led to the apprehension of Gourmonee, who admitted the purchase, but said she was told that the child was related to the prisoner Tara, and that the parents would themselves hereafter meet her and subscribe to the sale and take the balance of the purchase

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Case of TARA CHAN MATA and another.

The above facts being proved by the testimony of witnesses and the evidence of circumstances, and the *futwa* of the law officer declaring both prisoners liable to discretionary punishment, I convicted the first prisoner of burglariously stealing the child Nitaye, and the second prisoner, of purchasing the child knowing him to have been stolen. Of the guilt of the first prisoner, there cannot exist a shadow of a doubt. The guilty knowledge of the second prisoner, I infer from the following facts :—1*st*,—Because, no one was called in to witness the interviews between the two prisoners when the negotiation for the sale and purchase was going on. 2*nd*,—Because the child was bought from a party whom the female prisoner knew was not the parent. 3*rdly*,—Because she made no objection or demur to buy the child, nor did she make any attempt to find out if the sale of the child was by the consent of its parents, and 4*thly*,— Because the conduct of the male prisoner from first to last, was extremely suspicious, and was sufficient to have raised doubts even in the mind of the most simple, that he did not come by the child honestly.

The motive of the male prisoner in stealing the child is evident enough from the handsome sum he was to obtain by it. The motive with the second prisoner in purchasing him was, most likely, what she affirms it was, *viz.:* to adopt the child. From the condition in life of the female prisoner, the child would in all probability have fared better with her than with its own parents; but the theft of a tender infant, from whatever motive, is a cruel crime, producing a present anguish to its parents and calculated to cast a gloom over their domestic happiness for years A crime so injurious to the welfare of society, deserves to be visited with rigour, and the sentence of seven years with labor and irons to the male prisoner, and of three years with labor suited to her sex to the female prisoner, is I consider no more than a just punishment for the respective shares they took in this odious crime.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow Baronet.)—There can be no doubt that the prisoner No. 1, forced his way into the house of the prosecutor by night and carried off his infant son of about 1½ years of age. Prisoner had left his own village and taken up his residence in another district, a day's journey, and there changed his name. He confessed in the mofussil, and his sale of the child to prisoner No. 2, is fully proved by several witnesses. The prisoner, as was proved by the evidence of his wife made his appearance at Jyepore where the prosecutor was on the very night of the occurrence; he had absconded in a case of theft of a boat and being a bad character was apprehended, when he confessed. The circum-

stances of this case justify the sentence which has been passed on the prisoner.

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There is not satisfactory evidence enough for the conviction of the female prisoner. Mussumat Gourmonee No. 2, on the record. She bought the child in the presence of Mussumat Opoorlea and Mohonee bushtomee from the prisoner No. 1, to whom she paid a portion of the purchase money and promised to pay the remainder to him, when he should return with the infant's parents and the necessary deed should be drawn up. The prisoner took the money but did not return. There does not seem to have been any concealment or endeavour to aid the prisoner in the theft and disposal of the child on her part. She is acquitted and released.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

TRIAL NO. 4, GOVERNMENT AND OTHERS

versus

BUDDUN ATPAREAH (No. 22, OF OCTOBER CALENDAR, APPELLANT), AND RAMCOOMAR MUNDUL (No. 1 OF NOVEMBER CALENDAR.)

TRIAL NO. 5, GOVERNMENT AND OTHERS

versus

DAEMOOLLAH BHOOEAH (No. 18,) AND RAM COOMAR MUNDUL (No. 26).

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TRIAL NO. 6, GOVERNMENT AND OTHERS

BUDDUN ATPAREAH (No. 19), BASSEROODDEEN KAREEGUR (No. 20), DAEMOOLLAH BHOOEAH (No. 21), SHEIKH MELYE (No. 13), SUTTORAM BISWAS (No. 16), RAMCOOMAR MUNDUL SON OF CHYTUN MUNDUL (No. 17), ASALUT SIRDAR (No. 22) AND RAMCOOMAR MUNDUL (No. 23).

Case of BUDDUN ATPAREAH and others.

Conviction upheld in appeal in a case of a riotous attack in a village in which the prosecutor's house was set on fire. Sentence of five years considered too lenient.

CRIME CHARGED.—*Trial No.* 4, 1st count, riotously in an armed body, attacking the village of Goopeenathpore; and maliciously setting fire to the house of Ramchand Dhobee, plaintiff; 2nd count, riotously in an armed body, attacking the village of Goopeenathpore; 3rd count, assembling in an armed body, near the house of Ramchand Dhobee, plaintiff, with intent to commit a riot; 4th count, being accomplices to the above three crimes; 5th count, aiding and abetting in the aforesaid crimes.

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Trial No. 5.—1st count, riotously in an armed body, attacking the village of Goopeenathpore, and maliciously setting fire to the house of Sellamutoollah, prosecutor; 2nd count, riotously in an armed body, attacking the village of Goopeenathpore; 3rd count, assembling in an armed body near the house of Sellamutoollah, prosecutor, with intent to commit a riot; 4th count being accomplices to the above three crimes, 5th count, aiding and abetting in the aforementioned crimes. *Trial No.* 6.—1st count, riotously in an armed body, attacking the village of Goopeenathpore, and maliciously setting fire to the house of Akbar Sirdar, prosecutor; 2nd count, riotously in an armed body, attacking the village of Goopeenathpore, 3rd count, assembling in an armed body, near the house of Akbar Sirdar, prosecutor, with intent to commit a riot; 4th count, being accomplices to the above three counts; 5th count, aiding and abetting in the abovementioned crimes.

CRIME ESTABLISHED.—*Trial No.* 4, being present, armed in a riotous attack on the village of Goopeenathpore, in which the house of Ramchand Dhobee, prosecutor, was burned down with the property it contained. *Trial No.* 5, being present, armed in a riotous attack on the village of Goopeenathpore, in which the house of Sellamutoollah, prosecutor, was burned down with the property it contained. *Trial No.* 6, being present, armed in a riotous attack on the village of Goopeenathpore, in which the house of Akbar Sirdar prosecutor was burned down with the property it contained.

Committing Officer—Mr. T. B. Mactier, joint magistrate of Furreedpore,

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 10th February 1853.

Remarks by the sessions judge.—*Trial No.* 4.—The prisoners are charged as described in column 9, of this statement. The circumstances of this case were detailed in the abstract statement of prisoners punished without reference for the month of September last, from which the following is an extract:—"Disputes have for some time past existed between the proprietor of the Nakandah and Pykadangah factories, and the ryots of mouzah Goopeenathpore, regarding the cultivation of Indigo. The former endeavouring to force upon the tenantry an extension of the cultivation, and the latter resisting it. The factory proprietor is also their landlord and there are misunderstandings between him and the tenantry, respecting remissions of rent. Four or five complaints on either part, *i. e.*, the factory servants against the ryots, and the ryots against the factory people, of assault, &c., had been lodged in the foujdary court and disposed of previous to the occur-

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Case of BUDDUN AT-PAREAH and others.

rence of the present case of riot and arson. It appears from the evidence for the prosecution, seven witnesses to the fact having been examined, that on morning of the 15th December last, a large body of men issued forth from the two factories above-named, and assembled at the village of Goopeenathpore, which they attacked, and fired the house of prosecutor, Ram Chand Dhobee, and the houses of Selamutoollah and Akbar Sirdar, also ryots of the said village. It is not clearly established by what particular person or persons the house was fired, but it appears, that a small body of the rioters entered prosecutor's house and it was seen to be on fire immediately afterwards. It will be observed, that the attack on the village and firing of the houses were perpetrated in defiance of the police. The mohurrir, jemmadar and two burkundauzes, being eye-witnesses of the outrage." Two witnesses to the fact have again attended and been re-examined, and repeat their former statements and recognize the prisoners as having been among the armed rioters, who attacked and set fire to prosecutor's house. The prisoners deny the charge and plead *alibis*. The witnesses on behalf of prisoner, No. 22, are his relatives, and their statements are moreover contradictory. The prisoner, No. 1, has called no witnesses in support of his plea. The *futwa* of the law officer convicts the prisoners of being present, armed, in a riotous attack upon the village of Goopeenathpore, in which the house of prosecutor was set fire to, and burned down with the property it contained. In this finding, I concur, and have sentenced the prisoner, as described in column 12, of this statement. This trial came before the Superior Court in appeal, and the conviction and sentence of this court were upheld by the presiding judge (Mr. Mytton) on the 18th * December 1852.

Trial No. 5.—The circumstances of this case are the same as those in the foregoing one. The prosecution being at the instance of another riot of mouzah Goopeenathpore, whose house was likewise burned down. Three eye-witnesses have attended and been re-examined and repeat their former statements. They recognize the prisoners as having been present in the attack on the village, and the setting fire to the prosecutor's house. The prisoners deny the charge, but have given no good defence. The *futwa* of the law officer convicts the prisoners, Nos. 18 and 26 of being present armed, in a riotous attack upon the village of Goopeenathpore, in which the prosecutor's house was set fire to, and burned down with the property it contained in which finding, I concur, and have sen-

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* *Vide* page 896 of the Reports.

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Case of BUDDUN ATPAREAH and others.

tenced the prisoner, No. 18, as described in column 12, of this statement. The prisoner, No. 26, has been sentenced in the foregoing case, no sentence has therefore been recorded against him in this.

Trial, No.—6. The circumstances of this case are the same as those in the two foregoing. The prosecution being at the instance of another ryot of mouzah Goopeenathpore, whose house was also burned down by the rioters. Three witnesses to the fact have attended and been re-examined and they adhere to their former statements. They recognize the prisoners, Nos. 19, 20, 21, 13, 16, 17, 22, and 23, as having been among the rioters, who attacked the village of Goopeenathpore and burned down the house of prosecutor. The prisoners deny the charge, but their defence does not tend to exculpate them. The *futwa* of the law officer convicts them of being present, armed in a riotous attack upon the village of Goopeenathpore, in which the house of prosecutor was burned down with the property it contained. In concurrence with this finding, the prisoners, Nos. 20, 16 and 22, have been sentenced, as described in column 12, of this statement. The prisoners, Nos. 19, 21, 13, 17, and 23, have been sentenced in other cases ; no sentence has therefore been recorded against them in this.

Sentence passed by the lower court.—*Trial, No.* 4, prisoner, No. 22, in this, and case No. 6, prisoner No. 1, in this and the two following cases, each to a consolidated sentence of five (5) years' imprisonment with labour and irons.

Trial, No. 5, prisoner, No 18, five (5) years' imprisonment with labor and irons. Prisoner, No. 26, see sentence recorded in trial No. 4.

Trial, No. 6, prisoners Nos. 16, 20 and 22, five (5) years' imprisonment each with labor and irons. Prisoners, Nos. 13 and 23, see sentence recorded in trial No. 10, for September 1852. Prisoner, No. 17, see sentence recorded in trials, Nos. 4 and 5. Prisoner, No. 19, see sentence recorded in trial, No. 4, and prisoner No. 21, see sentence recorded in trial, No. 5.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The petitioners, 19, Buddun Atpareeah, 16, Suttoram Biswas, 17, Ram Coomar Mundul, son of Chytun Mundul, and 22, Asalut Sirdar, have appealed. The prisoner, No. 19, was, however, named in the first report sent from the spot by the police mohurrir on the date of the occurrence, the 15th December last, as having been recognized among the rioters by a burkundauz, Aleemooddeen. Suttoram Biswas, No. 16, was not named in the first statement of the prosecutor taken by the police mohurrir on the 16th December, but he was named in his statement to the darogah of the thannah of 2nd January

last, when the enquiry was subsequently taken up and actively prosecuted on the direction of the magistrate. No. 17, Ram Coomar Mundul, has been named throughout, and has no evidence which, even if credited, could establish his innocence. No. 22, Asalat Sirdar, was named in the prosecutor's earliest statement of 16th December, above refererred to, and the evidence against him has been direct and consistent. For this reason I concur with the sessions judge and law officer in discrediting the witnesses to his having been at the time lying sick at his home in another village Kaleemajhee.

1853.

April 19.

Case of BUDDUN ATPAREAH and others.

The appeals are rejected. I agree with the judge of this court, (Mr. Mytton,) who had before him an appeal from other prisoners convicted in the same case, that considering the open audacity of the riot and violence in defiance of the police, the sentences might with propriety have been made more severe.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND MOONDUL SING

versus

DEONATH (No. 1), RUGHOONATH (No. 2), DOMUN (No. 3), AND POORUN (No. 4).

HAZAREEBAGH.

1853.

April 21.

Case of DEONATH and others.

The prisoners were convicted of culpable homicide by the deputy commissioner, and sentenced to imprisonment with labor in irons, for 5 years. The sentence was confirmed by the Nizamut Adawlut in appeal.

CRIME CHARGED.—Wilful murder of Dhunsoo, brother of the prosecutor.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Captain W. H. Oakes, principal assistant agent, Governor General, Lohardugga, Hazareebagh.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebagh, on the 21st February 1853.

Remarks by the deputy commissioner.—It appeared that for about a year past a dispute had existed respecting a rice field called Dumerbera, on the boundary of the villages of Ramjari and Pagoloya, and that on the 17th November last, the prisoner, Rughoonath, accompanied by the prisoners, Deonath (his brother), Domun and Puran, and several others, came to cut the crop as belonging to Rughoonath and of the village of Ramjari, whereupon Dhunsoo and others, in all eight persons of Pogoloya, went to the field and remonstrated, claiming the crop as belonging to Dhunsoo and of Pagoloya village. Some words passed, and then the prisoner Domun struck Dhunsoo on the head with a club, so that he fell, and when down was assaulted by the other prisoners, Deonath, Rughoonath and Puran. The injuries inflicted were so considerable, that Dhunsoo never spoke afterwards, and died the next day. These circumstances were fully proved by the evidence of wit-

1853. April 21. Case of DEONATH and others.

nesses to the fact. The prisoners Deonath, Domun and Puran in their defence, severally pleaded *alibis*, in support of which they produced some evidence. The prisoner, Rughonath, in his defence alleged, that the crop in dispute was his; that he went with people to cut it but was opposed and beaten and driven off by the witnesses for the prosecution. Several witnesses on his behalf said, that they had assisted him to cut the crop. Some said that there was no dispute whatever; some that one Bhokonda, a witness for the prosecutor, had struck Rughoonath. All agreed in stating that the deceased Dhunsoo was not present. The jury found the prisoners guilty of culpable homicide. I considered the evidence for the prosecution to be in the main trustworthy, and it receives much confirmation from the evidence to the defence of the prisoner Rughoonath. The defence of the other prisoners is weakly supported, and the evidence for it is completely overborne by that for the prosecution. I therefore concurred in the verdict of the jury, and finding the prisoners guilty of culpable homicide, sentenced them as shewn. Disputes about land are frequent, and often violent in this district.

Sentence passed by the lower court.—Each, five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—There was no want of witnesses on behalf of the prisoners, but their evidence did not appear either to the deputy commissioner or to the jury, sufficient to outweigh the positive and consistent evidence for the prosecution. The petition of appeal does not attempt to shew, that that evidence was false; it contends that the prisoners being the true owners of the crops had a right to resist any party wishing to appropriate them. According to the evidence for the prosecution, the crops would appear to have belonged to Dhunsoo; but however this may be, nothing could justify the assault and maltreatment which caused the death of the deceased. I confirm the order of the deputy commissioner.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

ZUMEER SHIKAREE.

HOOGHLY.

1853.

April 22.

Case of ZUMEER SHIKAREE.

The prisoner was transported for life, as having belonged to a gang of dacoits.

CRIME CHARGED.—Belonging to a gang of dacoits.

Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity, Hooghly.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 15th April 1853.

Remarks by the officiating sessions judge.—The case was taken up at the request of the commissioner for suppression of dacoity, exercising powers of a magistrate in this zillah, and the proceedings have been held with reference to Act XXIV. 1843.

The prisoner is charged with having belonged to a gang of dacoits under the meaning of the above enactment, and has been committed on the full and complete confessions which he made before the commissioner to which I have the honor to refer the court. He is a resident of Aradeho, zillah 24-Pergunnahs, aged about 32 years, and pleads guilty to the charge, fully admitting the confessions made.

The confession recorded on the 29th of March is that which has been formally attested by depositions of the witnesses before the sessions. The prisoner states that he was associated in a gang with Keramdee Shikaree, Gopal Dome, and others. He has committed altogether 21 dacoities.

There is no doubt of the confessions being voluntary, and they carry with them convincing proof of their truth as to the fact of the dacoities committed. The prisoner alleges that he has been engaged in dacoities since he was twelve years of age.

As the punishment adequate for such an offender is far beyond what the law enables this court to adjudge, I submit the case for the orders of the court, considering the prisoner to be liable to sentence of transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—I convict the prisoner Zumeer Shikaree of belonging to a gang of dacoits, on his own full confession and plea of guilty. I sentence him to transportation beyond sea with hard labour and irons for life.

PRESENT :

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND RAMDYAL DOSS

versus.

RHEDOY MALLO (No. 7), DHOOKERAM MANJEE (No. 8), ISSUR MANJEE (No. 9), KOMUL MANJEE (No. 10), BHUGWAN MALLO (No. 11) AND BERJO MANJEE (No. 12).

DACCA.

1853.

April 22.

Case of RHEDOY MALLO and others.

The prisoners were convicted of river dacoity, and sentenced to 7 years' imprisonment with labor in irons.

CRIME CHARGED.—1st count, with belonging to a gang of dacoits—2nd count, dacoity on the hired boat of Ramdoyal Doss plaintiff, and plundering therefrom property to the value of rupees 196-9-6, and 3rd count Nos. 7 and 8 further with receiving and possessing portions of the stolen property knowing them to have been acquired by the aforesaid dacoity.

CRIME ESTABLISHED.—River dacoity at night on the boat of Ramdoyal Prosecutor.

Committing Officer—Mr. T. B. Mactier, joint magistrate of Furredpore, Zillah Dacca.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 18th February 1853.

Remarks by the sessions judge.—The circumstances of this case are as follows. The Prosecutor and witnesses to the fact of the dacoity set out from Lukeegunge in this district for Dacca, with revenue to be paid into the collectorate treasury in a boat which they had hired from the witness Nuddearchand Manjee. They desired the Manjee to proceed as far as a village called Paunchkholah and there remain till morning, and they all went to sleep. They were disturbed at about two hours before day-break by the blows of *lattees* on the *choppar* of the boat, and the prosecutor went out from under the *choppar* to see what was the matter when he was immediately seized, and a bag of rupees 180, which he had fastened round his waist, forcibly taken from him. The other passengers jumped over board. One of them, Nobokisto Mitter, (witness No. 1) had with him rupees 208 and rupees 14 worth of pice. He escaped with the former sum, but the pice fell into the hands of the dacoits. At day-break they found that the boat had been brought to at Chur, some distance from the village of Paunchkolah where they had directed the Manjee to stay. None of the dacoits were recognized, and the prisoners were arrested at the instance of the witness Nuddear Chand Manjee, from whom prosecutor hired the boat, and who, I have little doubt, planned the whole affair. The prisoners confess both before the police and the joint magistrate, and these confessions have been duly attested before this Court. The recovery of rupees 8-14-6 worth of pice and other property given up

by the prisoner No. 7, and rupees 158 from the house of the prisoner No. 8, has been established by evidence, and the property capable of recognition has been duly recognized. The prisoners deny the charge before this court, complain that the confessions were extorted from them, and plead *alibis*, but these are not supported by the evidence of the witnesses called by them. No personal injuries were sustained by the parties who were robbed, and, under all the circumstances of the case, I do not consider it to be one calling for a severer punishment than seven years' imprisonment with labor in banishment, and they have been sentenced accordingly.

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Case of RHEDOY MALLO and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoners in their petition of appeal assert that their mofussil confessions were extorted, and that they repeated the same story before the joint magistrate from fear of the police, but they have no evidence to support this assertion, and the confessions bear internal evidence of the truth of the statements they contain, and are besides well attested. The sentence of the sessions judge is confirmed.

PRESENT:

W. B. JACKSON, Esq., } *Judges.*
J. DUNBAR, Esq., }

GOVERNMENT AND PHOOL MAHOMED

versus

HEMATOOLLAH NOSYA (No. 18), AND SABUR MAHOMED (No. 19),

RUNGPORE.

1853.

April 22.

Case of HEMATOOLLAH NOSYA and another.

Conviction of assault with severe wounding, sentence 14 years' imprisonment with labor and irons.

CRIME CHARGED.—1st count, assault with severe wounding and 2nd count, being present, aiding and abetting in the same.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 22nd March 1853.

Remarks by the officiating sessions judge.—The case has been so fully reported in Mr. Wyatt's letters from this office No. 17* of 6th March and No. 56† of the 30th August 1852, that it will be unnecessary my detailing the whole circumstances of the violence again. The prisoners Hematollah and Sabur Mahomed had absconded since the occurrence, and were only arrested in November last in zillah Dinagepore. The prosecutor Phool Mahomed was unable to appear at their trial in consequence of severe illness, but in his evidence given

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* *Vide* Nizamut Report for April 1852, p. 496, trial of Shuffee Mahomed Dalal and others.

† Ditto, ditto for September 1852, p. 420, trial of Sonah Teleo.

1853. April 22. Case of HEMATOOLLAH NOSYA and another.

before the foujdary and sessions court, he three times deposed to Hematoollah having been one of the prisoners who ill-treated him, and five times to Sabur who, he stated, was a principal. The twice that he did not allude to Hematoollah before the courts is owing to the examination being restricted to the prisoner Zeaoollah then on trial, and the other offenders being only generally alluded to, while Phool Mahomed classed Sabur as a principal with Suffee.

Witnesses Nos. 1 to 8 now examined clearly prove both the prisoners to be guilty of being present, aiding and abetting at the assault, and the evidence now tendered tallies with that formerly given by the same persons in the foujdaree and sessions court.

Hematollah in his defence before the magistrate acknowledges he was present, but denies it before the sessions, and endeavours to set up an *alibi* to which he brings five witnesses (Nos. 15 and 18 to 21,) near relatives and connections of his own; but they failed to satisfy the Court.

Sabur denied before the magistrate and pleaded "*not guilty*" before the sessions, asserting he had been beaten and ill-used by Phool Mahomed and others previous to the assault complained of. He calls five witnesses in his defence. Nos. 27, 28, 30, and 31 know nothing at all about the matter, and No. 29 only knows that on the day of the occurrence Sabur was hurt.

The *futwa* of the law officer convicts on the 2nd count and declares the prisoners liable to punishment by *Tazeer*. I concur in the conviction, and as the court in the former cases submitted for their orders, sentenced Suffee Mahomed convicted on the 1st count to transportion for life, and the prisoners convicted on the 2nd count to 14 years imprisonment with labor and irons in banishment, the trial is now referred for orders in the case of these prisoners with a recommendation for a similar sentence.

Remarks by the Nizamut Adawlut.—(Present: Messrs. W. B. Jackson and J. Dunbar.)—

MR. WELBY JACKSON.—This is a case of brutal assault and maltreatment of the prosecutor Phool Mahomed, by a large body of men in the course of which, besides other injuries, a peg was driven into his eyes, from which nearly total blindness has resulted. The witnesses recognized the prisoners *Sabur* and *Hematoollah* as actively engaged in the outrage. I therefore convict them both on the first count of assault with severe wounding, and would sentence them to 14 years' imprisonment with labour and irons, but as the sessions judge only convicts on the 2nd count the opinion of another judge is necessary.

MR. J. DUNBAR.—I find on reference to the original proceedings that the fact of the prisoners (then absconded) having been present and been participators in the assault was deposed to by several witnesses. The evidence now given by some of those witnesses and others is precisely to the same effect, leaving no doubt of the guilt of the prisoners. I concur in the conviction and sentence proposed by Mr. Jackson.

1853. April 22. Case of HEMATOOLLAH NOSYA and another.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

VAKEEL OF GOVERNMENT

versus

MOBARUCK MONDOLE.

HOOGHLY. 1853. April 25. Case of MOBARUCK MONDOLE. Prisoner convicted of having belonged to a gang of dacoits, sentenced under Act XXIV. of 1843 to transportation for life.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer—Mr. E. Jackson, commissioner for the suppression of dacoity.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 15th April 1853.

Remarks by the officiating sessions judge.—The case was taken up at the request of the commissioner for suppression of dacoity exercising the powers of a magistrate in this zillah, and the proceedings have been held with reference to Act XXIV. 1843.

The prisoner is charged with having belonged to a gang of dacoits under the meaning of the above enactment, and has been committed on the full and complete confessions which he made before the commissioner to which I have the honor to refer the court. He is a resident of the district of Baraset, thana Kodomgachee, aged about 32 years, and pleads guilty to the charge, fully admitting the confessions made.

The confession recorded on the 30th of March is that which has been formally attested by depositions of the witnesses before the sessions. The prisoner states that he was associated in a gang with Rajoo Boiragee, Gore Shikaree and others. He has committed altogether 28 dacoities, one of them of a very daring nature some years since perpetrated by attack from the river on the house of a native gentleman of the name of Madhub Dutt, residing in Chinsurah.

There is no doubt of the confessions being voluntary, and they carry with them convincing proof of their truth as to the fact of the dacoities committed. The prisoner alleges that he has been engaged in dacoities since he was 24 years of age; that he was first enticed into the crime by one Bunshee chowkeedar of the same thannah, who brought him out on the pretext of going to a native musical or poetical entertainment.

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April 25.

Case of MOBARUCK MONDOLE.

As the punishment adequate for such an offender is far beyond what the law enables this court to adjudge, I submit the case for the orders of the court considering the prisoner to be liable to sentence of transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow. Baronet.)—The prisoner is sentenced under the provisions of Act XXIV. of 1843 to transportation for life with labor and irons.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND MUSSUMMAT MONEE *versus* JEENARAM.

BHAUGULPORE.

1853.

April 25.

Case of JEENARAM.

Prisoner convicted of rape on his own confession; sentenced to two years' imprisonment, the medical evidence differing from the prosecutor's statement as to her defloration, through the forcible possession of her person by the prisoner was proved.

CRIME CHARGED.—Rape on the person of Mussummat Monee, a girl.

Committing Officer—Mr. R. O. Heywood, magistrate of Bhagulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 31st March 1853.

Remarks by the sessions judge.—Prisoner pleads "*guilty.*"

The parties are both of the *Southal* class, inhabiting the skirts of the hills and less occupied parts of this district. The girl Monee appears very young. I should not have guessed her to be more than ten or eleven years old, but the medical evidence proves that she is in reality much older, from thirteen to fifteen. Dr. Allan says, she is comely and extremely simple in her demeanour. She is unmarried. The prisoner is a stout, rough lad, some twenty years old.

The story told is, that the girl had been out gathering wood in the jungle, and on her return homewards towards evening, met prisoner, whom she had never seen before; he asked her to yield to his embraces, which she refusing, he threw her down, and forcibly accomplished his purpose, holding her mouth with his hand. She managed however to cry out, and attracted the attention of two boys, (witness No. 2; No. 1, was too young, to examine on oath), who were grazing cattle and some others. They ran up to her assistance, when prisoner made off, but was recognized by Goojoo Luckhun, witness No. 3. Monee went home with the wood she had gathered, and told her maternal uncle Bindun Manjee, (witness No. 14), who immediately lodged a complaint at the thannah, twelve *coss* off. The rape took place the 19th, notice was given at the thannah on the 20th. Prisoner was apprehended the same day, and his con-

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Case of JEENARAM.

fession taken on the 21st. He repeats his confession both before the magistrate and this court, and attempts no defence.

The jury bring in a verdict of "*guilty*," in which I concur.

There is no doubt of prisoner's having more or less forced the girl Monee to submit to his embraces. His own repeated confession is to this effect. The medical evidence goes far to remove all suspicion of defloration at the time prisoner effected his purpose; but this, though perhaps an extenuating circumstance, does not absolve prisoner from the punishment attendant on the crime of forcible possession of the person.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The sessions judge is of opinion that more or less force must have been used. The medical opinion, the vicinity of the spot where the offence was committed to the high road, and the presence of some boys, grazing their cows near to it, lead to the conclusion that Mussummat Monee must have offered but little resistance, and it is shown from the deposition of Mr. Assistant Surgeon Allan, as contrasted with the deposition of the prosecutrix, that her account of her own condition previous to the occurrence must be received with great caution. "There were no marks of external violence, either on the girl's body or elsewhere, to show that violence had been used." The prisoner confessed throughout to having accomplished his purpose. The prisoner is sentenced to two (2) years' imprisonment, with irons and labor.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

RAMPUT SING (No. 5), JUGDOO SING (No. 6), SURRUB ROY (No. 7), NARAIN ROY (No. 8), SUMBUL SING (No. 9), HURRUCK SING (No. 10), BEJODHUR RAM (No. 11), HEERA MAHTO (No. 12), MOHEEPUT ROY (No. 13), RAMPHUL ROY (No. 14), RAMGOLAM GWALLA (No. 15), HOSSEIN BUX (No. 16), INDUR SING (No. 17), KASHEE ROY (No. 18), PURSUN AHEER (No. 19), AND AHBURRUM AHEER (No. 20).

SHAHABAD.

1853.

April 25.

Case of RAMPUT SING and others.

Some of the prisoners were convicted of affray with wounding, and the others of the same crime with the addition of that of maliciously setting fire to a house. The latter were sentenced to imprisonment for 5 years with labor in irons, the former to imprisonment for 4 years with labor redeemable by a fine.

CRIME CHARGED.—1st count, affray attended with wounding of Ramput Sing and Surrub Roy on one side, and Ramphul Roy and Ramgolam Gwalla on the other side, and 2nd count, maliciously setting fire to a house.

CRIME ESTABLISHED.—1st count, Nos. 5 to 20, affray attended with wounding Ramput Sing and Surrub Roy on one side, and Ramphul Roy and Ramgolam Gwalla on the other side; and 2nd count, Nos. 14 to 20, maliciously setting fire to a house.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 27th November 1852.

Remarks by the sessions judge.—This is a case of affray in which two men on either side received sword wounds, and a house was burnt in the melee.

The immediate circumstances which led to the fight cannot be confidently stated, the witnesses on both sides giving as usual, discordant accounts of the transaction.

The subject of the dispute is clearly the possession of mouzah Majee.

Of this mouzah, Salig Ram Sing is the *theekadar*, holding a lease of the same from 1255 (A. D. 1848,) from Mahomed Hossein.

This year other parties claiming share in the estate have given a new lease ostensively to one Manick Roy, but in fact to Ramjeeawun Roy, the son of Ramnath Sing the dewan of the Doomroow Rajah, a man of great wealth and influence in the district.

The belligerant parties are respectively the servants of the *theekadar*, Salig Ram Sing, and the parties of Mahomed Nuque who has granted the present lease.

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The witnesses on the side of Salig Ram Sing say, that his servants, prisoners Nos. 5 to 13, went peaceably to collect the rents of the village, when the other prisoners, residents of the village, and in the interest of Mahomed Nuque, made an assault upon them under the guidance of their principal, with swords and staves, wounding two of their number and setting fire to Salig Ram Sing's cutcherry.

The witnesses on the other side accuse Salig Ram Sing's party of coming down upon the village armed and in force, and burning the house of Asman Roy, the *muqudum* of the village.

The court is left to choose between the two stories; and I confess I am at a loss which to believe. Both probably are false; but that the battle took place is sufficiently evident.

The burkundauz and chowkeedars who were sent to prevent the affray, instead of throwing light upon the question, have increased the perplexity by siding with the party of Mahomed Nuque [through the influence doubtless of Dewan Ramnath Sing], and so far from keeping the parties separate, actually employed the men of one side to apprehend the others, thus setting them by the ears.

The whole of their evidence is so clearly false that I reject it altogether.

The magistrate, I observe, has suspended the burkundauz, and he will I think do well to subject him and his satellites to condign punishment for gross neglect of duty.

The wounds on both sides are sword cuts, pronounced by the civil assistant surgeon to be severe, though not dangerous.

Dr. Whittall having left the station, copy of his evidence taken before the magistrate has been filed with the case.

The defence of the prisoners rests chiefly upon the statements given by their witnesses who were examined for the prosecution, corroborated in some instances by other prisoners. Nos. 8, 9, 10, 11, 12 and 13, pleaded an *alibi*; but the evidence adduced was totally insufficient to establish the plea.

The *futwa* convicts the prisoners, Nos. 5 to 13, on one side, and Nos. 14 to 20, on the other side, and declares them liable to *seeasut*.

I am unable fully to satisfy my own mind as to the several degrees of culpability of the individuals engaged; but there are several circumstances which deserve consideration.

First,—Salig Ram Sing is clearly shewn to be in possession as *theekadar*, under a lease which commenced some five years ago, and has still four years to run.

Secondly,—The first intimation given at the thannah was given by Salig Ram Sing's servant, the day before the affray.

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Case of RAMPUT SING and others.

Thirdly,—The house that was burnt, was, I think, evidently the cutcherry, and not the private residence of any individual *ryot*.

On this point the direct evidence is, as on all other particulars, discordant; but the darogah distinctly corroborates the fact, that the building was that used as Salig Ram's cutcherry; and this certainly appears most probable, that Salig Ram is in possession, and that Mahomed Nuque's object, and avowed purpose is to disturb that possession, by disputing the right of the property to whom it was denied, is abundantly evident from good documentary evidence, and it is intelligible, in reference to this purpose and intent, that his party should perpetrate this violence.

At the same time it appears to me that Salig Ram's party assembled in some force, and though perhaps not with the intention of committing violence, yet certainly prepared to resist and repel any assault by violence.

Sentence passed by the lower court.—Nos. 5 to 13, each, four years' imprisonment, without irons and a fine of 100 rupees or labor, and Nos. 14 to 20, each, five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Moonshee Ameer Alli appeared for the prisoners from Nos. 5 to 13, Mouluvee Lootfuhrohman for Nos. 14 to 20.

Baboo Sumboonath Pundit for the prosecution.

The evidence against the prisoners Nos. 14 to 20, is of a positive character, clear and consistent throughout. That against the prisoners, Nos. 5 to 13, is less satisfactory. Taken as it was last given by the witnesses on the trial, it is sufficient for conviction, if held to be worthy of trust. The witnesses varied considerably in the statements made by them, in the mofussil, before the magistrate and at the trial, and full particulars seem to have been got out of them only with difficulty. The hesitation and partial contradictions in the evidence appear to me, to be attributable either to the apprehensions of the witnesses who may have been afraid to say out all that they knew, or to their anxiety to say as little as possible against the weaker party. However, the sessions judge and the law officer in whose presence the depositions were made, were satisfied with the evidence as to the main fact of the prisoners' having taken a part in the affray, and I see no sufficient reason to dispute the correctness of this conclusion. The sentence is accordingly confirmed.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

MUDHOOSOODUN DASS

versus

SOONDERNARAIN DASS.

MIDNAPORE.

1853.

April 25.

Case of SOONDERNARAIN DASS.

Conviction of culpable homicide upheld, but sentence reduced, the prisoner at the time of the commission of the crime being but a youth in company with, and under the control of his father.

CRIME CHARGED.—1st count, wilful murder, in having so severely beaten the prosecutor's uncle, Juggurnath Dass, as to cause his death on the following day; 2nd count, aiding and abetting in the above crime.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer—Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 7th February 1853.

Remarks by the sessions judge.—This trial is supplementary to that of the 27th* April 1852. The prisoner is son of Bhugutram Dass, then sentenced. According to the evidence then given, prisoner was an accomplice in the crime on which his father was arraigned; but has to the present time evaded the police. The particulars of the case are as follow:—On 24th June 1851, a quarrel ensued between the deceased, the prisoner, and his father, Bhugutram; that they both violently assaulted the deceased and dragged him by the hair of his head into their (prisoner's) house, where he became insensible; that deceased's nephew hearing what had occurred, proceeded to the spot accompanied by the police, and found Juggurnath Dass speechless, and removed him to his own house where he expired the following day. The inquest held in the mofussil shows, that the body bore marks of violence upon it, especially about the region of the stomach and loins. These marks according to the evidence were produced by kicks and blows of the fists, though the assistant surgeon is of opinion, that they must have been inflicted by the poke of some blunt weapon, and were sufficient to account for the death of the deceased. The evidence as to all these points is clear and distinct, and there can be no doubt that the deceased met his death from the effects of the assault which the prisoner and his father made upon him. The assessors declare the prisoner guilty of culpable homicide, and in this finding I concur. The prisoner has nothing to urge in his defence. He cites some witnesses, the object of which seems to be to prove that the chowkeedar was not to blame in failing to arrest him (the prisoner) as he had been for eight months in his home without the prosecutor's

* *Vide* p. 213, vol. II.

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RAIN DASS.

taking any notice of his being there. If this were true, it does not appear how it would relieve the chowkeedar of his responsibility in neglecting to arrest prisoner, knowing, as he must have done, that warrants had been issued for the prisoner's apprehension one year and half previously. The prisoner is sentenced as indicated.

Sentence passed by the lower court.—Seven years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoner's appeal is mainly on the ground of so long a time having been allowed to elapse before his apprehension; but it is clear that he was named from the first as his father's accomplice in the gross assault to which the charge refers, and that he evaded repeated attempts which were made by the police authorities to secure his seizure.

I see no ground to doubt the propriety of his conviction, but he could only have been about 15 years of age when the assault was committed, and he was then in company with, and under the control of his father. Under such circumstances, although I concur with the opinion recorded by Mr. Mills on the 13th August last, that the father ought to have been sentenced more severely, I think it will be sufficient to limit the sentence on the prisoner to imprisonment for four (4) years, with a fine of rupees 25, payable in 14 days from the date of communication of this order, or in default of payment to labour. The sentence is reduced accordingly.

PRESENT:

SIR R. BARLOW, BART.,
J. R. COLVIN, ESQ., } *Judges.*
J. DUNBAR, ESQ.,

GOVERNMENT

versus

BHEEM SINGH.

MOORSHEDABAD.

1853.

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Case of BHEEM SING.

The prisoner was convicted of the murder of his own infant, by dashing her down on the ground with such violence that she almost immediately afterwards expired. As it appeared that there was no previous design or malice, and that the prisoner had acted on a sudden impulse of passion while excited by liquor, he was sentenced to imprisonment for life in transportation.

CRIME CHARGED.—Wilful murder of his infant daughter, Puddo.

Committing Officer—Mr. C. F. Carnac, officiating magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 5th January 1853.

Remarks by the sessions judge.—The prisoner pleaded "*not guilty.*" The particulars of this case are as follows:—

On the 19th Assin last, at 3 P. M., Godhun Sheikh, a neigh- of the prisoner, was smoking his pipe at his house, when the prisoner entered in, and having absused him, went away. Shortly after he came back and commenced again abusing him. The abuse was returned, and the prisoner attempted to strike Godhun with a *latee*, but the witness Jeebun interposed. He then brought his infant daughter a child of 28 days old, and threw her down on the road which caused her death.

The eye-witnesses to the fact, Judub chowkeedar, Amanut Sheik, Umerto Bewah, Echa Muhuldarny and Jeebun, stated, that an ill feeling existed between Godhun and the prisoner, and that in order to involve the former in the consequences of the act, he carried his child and threw her down on the road before him.

Rookmee stated, that having heard the quarrel between the prisoner and Godhun, she came to the spot and found the child lying almost lifeless. She took her up and gave her to her mother, but she immediately expired.

Poorna Awooruth, the prisoner's wife stated, that the child fell down as the prisoner was quarrelling with Godhun.

The civil surgeon deposed on oath, that the child died from a violent fall to the ground.

The prisoner denied the charge and pleaded that his child was in his arms, but fell down as he was quarrelling with Godhun. He named the witnesses for the defence.

The law officer convicted the prisoner of wilful murder, but as the prisoner killed his own child, he considered *kissas* barred.

I agree with the law officer in considering the prisoner guilty of the *wilful murder of his child*, and if he brought her in his arms for the purpose of throwing her on the ground, in order

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that the *prosecutor* might suffer for the consequences of the fall, it would be one of a deliberate and atrocious nature. But this motive is not clearly established, and it is possible that the act may have been a sudden one under strong provocation. I would allow him the benefit of the doubt, and would recommend that the capital punishment be remitted, and that he may be imprisoned for life with labor and irons in the Allipore Jail.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Messrs. J. R. Colvin and J. Dunbar.)—

SIR R. BARLOW.—The prisoner pleads that his infant was in his arms and *fell down* as he was quarrelling with Godhun. The witnesses, Jadoo, Etcha Muhuldarny and Jeebun in the foujdaree court deposed, that the prisoner was quarrelling with Godhun, went to his own house and thence brought out his infant, 22 days old, and *threw it down* on the ground at the door. Evidence to the same effect is given by them in the sessions court as well as by Amanut Sheik, Omerta Bewah, and they all state that the prisoner made use of threatening expressions in the act. The infant died almost immediately.

The sessions judge concurs with the law officer in considering the prisoner guilty "of the wilful murder of his child, and if he brought her in his arms for the purpose of throwing her on the ground, in order that the prosecutor might suffer for the consequences of the fall, it would be one of a deliberate and atrocious nature."

There is some inconsistency in the first and second clause of this passage; the finding of "wilful murder" presumes deliberation. In fact the whole of the evidence, if true, and I see no reason to doubt it, proves that the prisoner went to his house for the purpose of fetching his infant to throw it down before the person with whom he was quarrelling to visit him with the consequences. The expressions he made use of, prove this.

The judge goes on :—"But this motive is not clearly established and it is possible, that the act may have been a sudden one under strong provocation." This judgment is contrary to the evidence on the record, and the suggestion that the act may have been a sudden one under strong provocation is not supported; for what degree of provocation could justify the murder of his own infant by the prisoner?

I am of opinion, that he has been proved guilty of wilful murder, and that he should be sentenced capitally.

MR. J. DUNBAR.—It is in evidence that the prisoner had been drinking spirits, and was under the influence of drink at the time. Inebriety does not palliate guilt, but it may be taken into consideration, in forming a judgment, as to the purpose and degree of deliberation with which a crime has been committed. The prisoner appears to me to have acted on a

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sudden impulse and probably with no clear intent to take the life of the child. He could not possibly have thought that Godhun Chowkeedar could in any way be made responsible for the act. He rather wished, I apprehend, to make Godhun regret that he had driven him to such extremities, and threw down the child without considering what would be the consequence. Under all the circumstances of the case, I would adopt the recommendation of the sessions judge, and sentence the prisoner to imprisonment for life with labor in irons, not however in the Allipore jail, but in transportation beyond sea.

MR. J. R. COLVIN.—This is a painful and difficult case. The evidence is distinct that the prisoner, in a fit of excitement and passion, aggravated doubtlessly, the fact of his having been drinking, threatened a party, whom he had been abusing and quarrelling with, that he would get him into a scrape, and then went to his own house, which was, close by, and bringing his own daughter, of 23 days old, dashed her down on the ground with such violence that she almost immediately afterwards died. The act is of gross brutality towards a helpless infant, his own child. I would, however, make allowance for the state in which the prisoner was excited by liquor, though still master of his actions. There is no evidence of previous design or malice. A capital punishment, under such circumstances, may not be called for for the sake of example.

I concur, therefore, in the mitigated sentence proposed by Mr. Dunbar.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND JOYMOLLAH GATCHOO

versus.

NEELOO (No. 3), MUSTRAM (No. 4), RUTTEE FUKEER (No. 5), ANUNDY DOSS (No. 6), RUBBEE DOSS (No. 7), DOOLAL DOSS (No. 8), LALCHAND DOSS (No. 9), CHOOTOOR NUSHA (No. 10), DHUNNY MANJEE (No. 11), NUNDRAM (No. 12), FUKEER NUSHA (No. 13), AND BULLURAM (No. 14).

RUNGPORE.

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Case of NEELOO and others.

Three of the prisoners were acquitted for want of proof. The conviction of the others modified, but sentences affirmed, except that passed on one prisoner which was reduced.

CRIME CHARGED.—Nos. 3 to 14, 1st count, dacoity in the house of the prosecutor on the 10th December 1852, corresponding with 26th *Ugghun* 1259 B. S.; 2nd count, accomplices in the commission of the said crime; 3rd count Nos. 3 to 13, taking and having in possession property acquired by the said, dacoity, knowing it to be so acquired, 4th count, belonging to a gang of dacoits.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 5th March 1853.

Remarks by the officiating sessions judge.—This dacoity occurred in thannah Peergunge on the 10th of December last, property taken; Nos. 1 to 26; property found, Nos. 1 to 28.

Joymollah, the prosecutor, deposes, that on the night in question he had taken his meal and gone to sleep, and that about 1 or 2 in the morning he was awakened by a noise and found several persons both inside and outside the house. There were several *mussals* lighted, and by that light he saw all that went on, although, as the men had their faces covered with cloth, he could not recognise any of them. He remonstrated and was knocked down. With the exception of one silver ornament, (No. 4), he recognizes all the property now produced as that which was taken from his house. One of the witnesses, Ruhimollah, states, that he told the darogah on the morning of the occurrence that he had gone out early for the purpose of easing himself, and that he saw the prisoners, Nos. 3 to 5, all of whom he knows running away from the east to the west; that they all had their faces bound up, and that he suspected them of being concerned in the dacoity; in consequence the darogah searched their houses, when they confessed and gave up the property.

The acting darogah, Gholam Momeen, continued his investigations, and finally sent in, besides the three before-

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mentioned, prisoners Nos. 6 to 11 and 14, all confessing prisoners, and with the exception of No. 14, all had given up property confessed to have been taken in the dacoity, and Nos. 12 and 13, implicated by the confessions. Before the magistrate, prisoners Nos. 3 to 8 and 11 repeated their confessions and before the sessions court, prisoners Nos. 3 to 6 and 11' again most clearly confessed.

Jadoo chowkeedar, Hematoollah and Khureah Gatchoo, all state the particulars of the attack,—the former was bound hand and foot by the dacoits, but none of them can recognise any of the persons.

Witnesses Nos. 3, 9, 10, 11, 20 to 27, 31, 35, 36, 37, 39, 40 and 42, prove the producing of the property in the houses of the several prisoners.

Witnesses Nos. 1 to 4, prove the property found to be the prosecutors.

Witnesses Nos. 9 to 14, prove the confessions in the mofussil of prisoners Nos. 3 to 11 and 14.

Witnesses Nos. 12 to 19, prove the confessions of the prisoners No. 3 to 8 and 11, before the magistrate,

The non-confessing prisoners before the sessions court attempt to prove ill-usage by the darogah, but fail, their witnesses Nos. 34, 75 to 78, 80, 81, 82, 86 111, 112 and 113, having seen no ill-usage and knowing nothing about it.

I tried this case under Act XXIV. of 1843 and sentenced prisoners 3 to 8, 10 to 12 and 14, to ten years' imprisonment each, with labor and irons; and Nos. 9 and 13, to ten years, and two years more in lieu of ratan.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoners Nos. 3, 4, 5, 6, 7, 8 and 11, confessed before the magistrate, and Nos. 3, 4, 5, 6, and 11 before the sessions court; plundered property was also found in their possession.

No. 9 confessed in the mofussil, and himself produced a *huslie* buried in some corn, stating it was plundered property. He recanted before the magistrate, but the production of the property is attested by several witnesses. In the sessions court he pleaded that he had been beaten by the police and adduced three witnesses; two witnesses, one his own brother, another his cousin, support the allegations, a third is ignorant of the fact, the evidence for the prosecution outweighs that for the defence.

No. 10. The grounds of the prisoner's conviction are the same as those for the conviction of No. 9. He has not appealed against the sessions judge's sentence.

No. 12. Prisoner denies his mofussil confession. It was only to the extent of receipt of plundered property (rupees 5)

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from No. 13 prisoner. Property, 17 and 18, a *haslie* and *thalie* found in the prisoner's house, is claimed by the prosecutor, but the witnesses for the defence also recognise them as the prisoner's property. The rupees are not of course capable of recognition.

No. 13 has denied the charge throughout. A *haslie*, No. 15, was taken from his wife's neck, which the prosecutor and the prisoner both claimed and have endeavoured by evidence to establish their claim. The right to this property is not clearly proved by prosecutor, and the prisoner is entitled to the benefit of a doubt. It is not very probable that the woman should have worn the *haslie* in public whilst the search for the plundered property was going on.

No. 14 is said to have confessed before the police, but there is no other evidence against him.

I convict the prisoners Nos. 3 to 11 of being accomplices in dacoity, and receipt of plundered property knowing to be such, and sentence them to (10) ten years' imprisonment with labor and irons. The evidence against the prisoners Nos. 12, 13 and 14 is not satisfactory or sufficiently clear for conviction, they are acquitted and released.

On the appeal of the prisoners Rubbee Doss and Doolul Doss, Nos. 7 and 8, in the case the presiding judge recorded the following remarks on the 30th April 1853.

"The case of these prisoners were disposed of with others on the same charge on the 25th instant, the prisoners confessed before the magistrate and produced plundered property, their conviction was upheld. In appeal now brought forward nothing is urged which warrants interference with that order."

PRESENT:

J. DUNBAR, Esq., *Judge.*

BHAGBUT BEARAH

versus

NUBBEEN DOSS.

CUTTACK.

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Case of NUBBEEN DOSS.

The prisoner was convicted of attempting to murder a boy for the sake of his ornaments by cutting his throat, and sentenced to imprisonment for life in transportation beyond sea.

CRIME CHARGED.—Wounding Nunda, a boy of 11 years of age, the son of the prosecutor, with a knife or other sharp cutting instrument with the intent to murder, and stealing from his person silver ornaments to the value of rupees 3; second count, having in his possession stolen property knowing that it had been so obtained.

Committing Officer—Mr. R. P. Harrison, officiating magistrate of Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack on the 23rd March 1853.

Remarks by the sessions judge.—The particulars of this case are as follows:—

On Wednesday, the 3rd March, at about 10 o'clock, Nunda, a boy eleven years of age, accompanied his parents to the Thakoor haut or market which is within a common gun range from their house, and as he was shortly afterwards returning home alone with some *choora*, he was met, about one biggah from his house by the prisoner Nobeen Doss, who inveigled him into the adjoining jungle and there threw him down and robbed him of a silver *kurroo* and *taveez* consisting of various artices, valued together at rupees 3, and attempted to murder him by cutting his throat with a clasp knife which the child had suspended to his waist. But the child's cries having been heard by Fukeer Mahomed, witness No. 3, who was thatching his house about 100 cubits distant from the scene of the occurrence, he supposed them to be the cries of his own son, called out and enquired who was beating his child, and the prisoner on hearing him became alarmed and absconded with the ornaments, while the child went to his house screaming, with his neck, face, and clothes covered with blood, and informed Arut Bearah witness No. 10, who had gone to the prosecutor's house to arrange about the marriage of his son, that the prisoner Nobeen Doss had wounded and robbed him. And Bhagbut Bearah, the prosecutor having learned of the occurrence immediately came home from the haut, and after seeing his son proceeded to the Thannah and gave information, and in the evening Nobeen Doss was arrested by witnesses, Nos. 1 and 2, and in the presence of Koonwar Khan Burkundaz who was in the first place deputed by the darogah to enquire into the case, he confessed and produced

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the ornaments which he had concealed under some clods of earth near an embankment about a quarter of a mile from the prosecutor's house.

The knife with which the prisoner attempted to cut the child's throat was found in the jungle where the crime was perpetrated, by the above named witness Arut Bearah, at the indication of Nunda, shortly after the occurrence, and traces of blood were also seen there.

The wounds on the child's neck, six or seven in number, following in close succession to one another from ear to ear, appear, with the exception of two of them, to have been superficial and slight, and they had so far healed at the time the boy appeared before the magistrate, that he did not deem it necessary to place him under the care of the Medical Officer.

The prisoner pleaded "*not guilty*" before this Court, but he confessed before the magistrate as well as the police, and both his confessions are proved to have been voluntarily made.

Nunda was not examined before this Court, because he did not appear to have a sufficient knowledge of the obligation of an oath; but his deposition without oath is to be found among the Fouzdarry records.

The *futwa* of the law officer canvicts the prisoner Nobeen Doss of the crimes charged, and in this verdict I fully concur; and, under all the circumstances of the case, I would sentence him to imprisonment in transportation beyond sea for life, for I entertain no doubt whatever that he intended to murder the child and that he was only prevented from doing so by the bluntness of the knife, and the timely interference or enquiry of witness No. 3.

The Court will observe from the English correspondence and the proceedings of this Court dated 23rd instant, filed at the commencement of the record of the case, that the prisoner was in the first instance committed on the 1st count with robbery by force and violence, of silver ornaments valued at rupees 3, belonging to the prosecutor from the person of his son Nunda, a boy of about eleven years of age, and with having in the commission of the said robbery slightly wounded the said Nunda, upon the throat with a knife; but after recording the depositions of the prosecutor and Fukeer Mahomed witness No. 3, and inspecting the scars on the neck of the child Nunda, I felt convinced that the prisoner ought to be put on his trial for attempting to murder the child, and accordingly directed the magistrate to commit on the present charges.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner distinctly admitted in his mofussil confession that he attempted to cut the boy's throat with the purpose of possessing himself of the ornaments; and before the

magistrate he said that he desisted from cutting, only when the boy began to scream, and made off with the ornaments. There can be little doubt that the screams saved the boy's life. The fear of being caught in the very act made the prisoner fly. I concur in the propriety of the sentence recommended by the sessions judge, and sentence Nobeen Doss to imprisonment for life with laboor in irons in transportation beyond sea.

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PRESENT:

J. DUNBAR, Esq., *Judge.*

SHEIK GOLAP

versus

POKAOOLLAH (No. 6), ADAM KHAN (No. 7), DEDAR KHAN (No. 8), MIAJAN (No. 9), KHOAZ (No. 10), SHEIK AMOOD (No. 11), OOZEER (No. 12), DOWLUT (No. 13), IBRAHIM ALLEE (No. 14), FUZOO (No. 15), KADERBUKSH (No. 16), ALLEENOWAZ (No. 17), NADOO (No. 18), BOODYE (No. 19), MADHOO (No. 20) AND AMBER ALLEE (No. 1.)

TIPPERAH. 1853. April 26. Case of POKAOOLLAH and others. Prisoner convicted of culpable homicide with circumstances of aggravation, sentenced to imprisonment for 10 years with labor in irons.

CRIME CHARGED.—No. 6, 1st count, wilful murder of Aynuddeen *alias* Anoon son of the prosecutor.- 2nd count, riot attended with the murder of Aynuddeen and wounding of Mahomed Amir. Nos. 7 to 20 and No. 1—1st count aiding and abetting in the wilful murder of Aynuddeen *alias* Anoo, son of the prosecutor; 2nd count, aiding and abetting in wounding Mahomed Amir; 3rd, count, riot attended with the murder of Aynuddeen and wounding of Mahomed Amir.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 28th March 1853.

Remarks by the sessions judge.—On the 6th of November 1852, the chowkeedar of mouzah Chandpore gave information to the jemadar of a neighbouring *pharree,* that an affray had occurred during the morning of that day, between Amber Allee and Tameezooddeen (tehseeldars of Nubkishen Rai and Ranjkishen Rai, zemindars of the annas 12, gundas 12 share of pergunnah Surryle) on the one part and the ryots of the village of Chandpore on the other, in the course of which the tehseeldar's party had speared Aynuddeen in the lower part of the abdomen causing immediate death, while many others had been wounded.

On the 7th of November the father of the murdered Aynuddeen laid a complaint regarding the death of his son who, he stated, had been speared while employed with some neighbours in cutting paddy.

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The darogah on the 28th of the same month sent in his final report, the purport of which was that the affray had been mutual, the zemindar's tehseeldars having attached the crops of Doolan and others, the ryots of Chandpore had assembled provided with *lattees* and bamboo yokes for the purpose of cutting and carrying off the crops, when the zemindars' people arrived in a considerable body, armed with *Rae-bash, lattees &c.*, and in one instance with a pellet-bow. An affray immediately took place in the course of which Aynuddeen was murdered and Mahomed Amir wounded on the side of the ryots, and Adam Khan, a partizan of the zemindar's, wounded and carried off.

The magistrate took a different view of the case, which he held to be one of riot and aggression on the part of the zemindar's people and not of mutual affray in which the ryots of Chandpore could be justly held to be implicated. The latter, he observed, had not been shown to have inflicted any serious wounds on their opponents, and were occupied in peaceably cutting the crops, when the zemindar's people arrived strongly armed and commenced an attack upon them, while if, in the course of this attack the ryots had in a slight degree assaulted their opponents, it was no more than was justified by self defence. The magistrate further held that the evidence of the sale commissioner's peon did not establish the attachment of the ryots' crops. Acquitting the one party, therefore, as unconcerned in an affray, he committed the zemindars' people on the charges set forth in the calender.

I am at a loss to understand how the magistrate could have arrived at the conclusion that no attachment had taken place. The peadah deposed at the thannah that he proceeded to the village with four notices *(elams)*, and accompanied by two munduls of the zemindaree tehseeldars to point out the parties on whom they were to be served, when a body of the villagers to the number of twenty or twenty-five individuals came out armed with lattees and drove the witness and his companions from the precincts of the village. Now these *elams* must have been consequent on attachment, inasmuch as they announce its having taken place, and invite the defaulter to prefer any objections he may wish to urge in bar of the sale taking place. The question regarding these attachments was however easily set at rest by an application to the collector, in reply to which I received four nuthees showing that four attachments had taken place, and that the peon had in each instance been forcibly prevented from serving the usual notices, and had consequently laid a complaint before his immediate superior, the sale commissioner.

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The real character of the case I believe to be this. The crops were undoubtedly attached and the measure being naturally very unpalatable to the ryots, these hastened to cut and possess themselves of the produce of their fields. The zemindars' tehseeldars Amber Allee (prisoner No. 1, calendar No. 1) and Tumeezooddeen hearing of what was taking place, hastened to the spot with a number of armed followers and with the purpose of driving the ryots from the fields. In doing this the deceased Aynuddeen was in the first instance struck on the breast by a pellet-ball shot at him by the prisoner Adam Khan (prisoner no. 7), and then speared through the lower part of the abdomen (the *Rae-bash* entering at the groin) by the prisoner Pokaoollah (No. 6), the witness Mahomed Ameer (No. 50) being wounded by some party unknown to him in the thigh. There is nothing in my opinion to show that the ryots of Chandpore went to their fields with any view to an affray, or with any anticipation that a riot would take place. They appear to have had no weapons with them of the description which alone would enable them to meet the armed retainers of the zemindars on at all equal terms. They had in fact nothing but *lattees* and the common bamboo yokes in use to carry away the grain when cut. Adopting this view of the case, I am of opinion that the ryots were thus far the originators of what ensued, that they went to cut crops they well knew had been attached and which they had no right to meddle with until the claims of their zemindars had been settled, or security given to contest them. But the zemindars' people on the other hand had clearly no right whatsoever to take the law into their own hands and to maintain the attachment by force of arms. The cause of the riot arose on the part of the ryots, the riot itself on that of the prisoners who were the first to resort to active violence with the view of preventing the removal of the crops.

The prisoners pleaded "*not guilty.*"

The evidence for the prosecution is derived from witnesses liable certainly to the objection of being ryots of Chandpore, but in whose description of what took place there are no material discrepancies to justify its rejection. They deposed that they were employed on the morning in question in cutting the crops of the land around Chandpore, when a body of armed men headed by Tameezooddeen and Amber Allee, and among whom were the prisoners now under trial, arrived at the spot. The leaders above named ordered their followers to bring the deceased Aynuddeen before them, on which the prisoners Pakaoollah (No. 6) Adam Khan (No. 7) and some others surrounded the ryots, and Adam Khan (prisoner No. 7) struck Aynuddeen with a pellet shot from a bow, full in the breast. Aynuddeen when thus assaulted struck Adam Khan to the

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ground with the bamboo yoke, on which Tameezooddeen and Amber Allee ordered the prisoner Pokaoollah (prisoner No. 6) to bring Ayuuddeen before them pierced with a *rae-bash*. Pokaoollah immediately ran the *rae-bash* he held, into the lower part of Aynuddeen's abdomen, who fell to the ground. The winesses raising a loud outcry for help, the villagers of Chandpore hastened to the spot on which the rioters made their escape. The deceased Aynuddeen's father directed that the prisoner Adam Khan, (No. 7,) who was still lying on the ground should be detained, and hastened to his son who shortly after expired. When questioned as to the motive for this violence on the part of the zemindars' people, they replied that it arose from a desire resisted by the ryots, to extort *mathote*. Of the attachment of the crops they professed to have no knowledge.

The above may be said to constitute tbe substance of the evidence of the witnesses to the fact, Nos. 46 to 50. That of the witnesses to the circumstances of the case Domun Chowdri presented contradictions which placed it beyond the pale of credit.

Dr. H. F. Williams deposed, that death resulted from effusion of blood into the peritoneum, the consequence of a small wound in the left groin which wounded the intestines in two or three places, and was probably inflicted bv a sharp pointed instrument. There was also a slight indented mark in the breast.

The prisoner Adam Khan, (No. 7,) stated that be had gone with the peadah to serve the *elams* or notices of attachment, and had been assaulted and detained by the ryots of the village. The remaining prisoners set up *alibis* which, with one exception, were not supported to my satisfaction. It is a common form of defence and one which, while at times sustained by sufficient proof, is too often an entire fiction. In the instance of the prisoner Pokaoollah, (No. 6,) it adopted a very ingenious form, but without persuading me of the innocence of the most prominent among the rioters. The riot took place on the 22nd Aughun, and the prisoner has produced a complaint laid against him before the deputy magistrate of Moonsheegunge, on the 3rd of Poose, (the petition being dated the 28th of Aughun,) charging him with assault on the day of the occurrence of the riot at a place called Goburnud, in consequence of which he was actually sentenced to a fine of Co.'s Rs. 5, and in default of payment to 15 days, imprisonment. I have not the slightest doubt that this was a friendly action brought expressly to provide the means of defence against the present charge, the light in which the magistrate also viewed this prisoner's defence.

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The Mahomedan law officer concurred with me in considering the prisoners Dowlut, (No. 13,) Fuzoo, (No. 15,) and Boodye, (No. 19,) entitled to acquittal, the first and third in consequence of insufficient proof of their having been concerned in the riot, and Fuzoo, (No. 15,) as having established a most sufficient and satisfactory *alibi.*

The *futwa* acquitted the prisoner Pokaoollah, (No. 6,) of the wilful murder, but convicted him of the culpable homicide of the deceased Aynuddeen. It declares the prisoner Amber Alee, (No. 1,) guilty of ordering and directing such murder, and the prisoners Adam Khan, (No. 7,) Dedar Khan, (No. 8,) Meajan, (No. 9,) Khoaz, (No. 10,) Sheik Amood, (No. 11,) Oozeer, (No. 12), Ibrahim Alee, (No. 14,) Kaderbuksh, (No. 16,) Aleenowaz, (No. 17,) Nadoo, (No. 18,) and Madhoo, (No. 20,) guilty of aiding and abetting in the homicide of the said deceased.

I have already remarked that the evidence in support of the prosecution is derived from witnesses who stood, when the case was first forwarded from the mofussil, themselves in the position of defendants. This may have led to a partial distortion of the circumstances attending the death of Aynuddeen favourable to themselves and unfavourable to the prisoners. But it appears to me, on the whole, established that the deceased met his death in a riot occasioned by the determination of the zemindaree tehseeldars, that the attached crops of Chandpore should not be cut by their owners, and that he fell by the immediate act and deed of the prisoner Pokaoollah, (No. 6), the prisoner Amber Alee, (No. 1) being present as one of the two leaders and directors of the disturbance, and the remaining prisoners (with the three exceptions in the acquittal of whom the Mahomedan law officer has concurred with me,) being aiding and abetting therein. I would sentence the prisoner Pokaoollah, (No. 6,) to ten years' imprisonment with labor in irons; the prisoners Amber Allee, (No. 1) and Adam Khan, (No. 7) to five years' imprisonment with labor in irons; and the prisoners Dedar Khan, (No. 8,) Meajan, (No. 9) Khoaz, (No. 10) Sheikh Amood, (No. 11) Oozeer, (No. 12) Ibrahim Allee, (No. 14) Kaderbuksh, (No. 16) Aleenowaz (No. 17) Nadoo, (No. 18) and Madhoo, (No. 20) to three years' imprisonment with a fine of Company's rupees fifty, payable within fifteen days from receipt of the Court's orders on this case, (supposing it to uphold the view I have taken of its merits) or otherwise to labor in irons. I have passed sentence on all the prisoners accordingly with the exception of Pokaoollah, (No. 6,) but kept its execution in abeyance until receipt of the court's judgment.

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Remarks by the Nizamut Adawlut.---(Present: Mr. J. Dunbar.)---The sessions judge has not stated in his report his own opinion as to the crime established against the prisoners, but on referring to the Bengallee record, I observe his finding to be in accordance with the *futwa* of the law officer. I concur in convicting the prisoner Pokaoollah of culpable of homicide, and viewing the case as one attended with circumstances of aggravation, I sentence him, as proposed by the sessions judge, to imprisonment for ten years with labor in irons.

The other prisoners have appealed, but I see no reason to interfere with the sentence passed upon them.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

CHUTTUR LOL AND GOVERNMENT

versus

BEEROO (No. 9) AND NEM (No. 10).

BHAUGULPORE.

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Case of BEEROO and another.

Conviction of burglary and theft upheld in appeal.

CRIME CHARGED.—1st count, burglary and theft of property valued at Co.'s Rs. 146-1-9; 2nd count, having in their possession stolen property, knowing the same to have been obtained by the above burglary and theft.

CRIME ESTABLISHED.—Burglary and theft of property, valued at Co.'s Rs. 146-1-9.

Committing Officer—Mr. A. Hope, officiating magistrate of Monghyr, Bhagulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 18th January 1853.

Remarks by the sessions judge.—Prosecutor states, that on the night in question, he was asleep in the verandah of his house. Awaking a little past mid-night, he went to the back of his house to make water and there saw that a *seind* had been made on his premises through a mud-wall facing the road. He immediately gave the alarm and told Musseeroolla chowkeedar, (witness No. 2,) but the thieves had made off prior to his observance of the *seind*. The next morning early he went in company with the chowkeedar and gave notice at the thannah, intimating to the darogah his suspicions of the prisoners and others on account of their bad character. Two of the prisoners, Beeroo and Nem, Nos. 9 and 10, live within half coss of prosecutor. Their houses were first searched, and some property found, which was sworn to by prosecutor. They then both confessed and promised to point the other thieves and the rest of the property.

In Beeroo's house was found a brass *lotah* and a small piece of *khurwah* cloth; in Nem's, a *brass thalee*, a *nynsook kumur-*

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bund and a small piece of *khurwah*, on their pointing out, the houses of the other prisoners were searched and sundry articles produced as part of that stolen, but all of so common a description that no faith can be put in its identification. All these prisoners, (Nos. 11, 12, 13 and 14,) confessed at the thannah to be implicated in the robbery of Chutter Lall's house, but before the fouzdaree and this court, repudiate this confession and deny all connection with the crime; Beeroo and Nem only persisted before the magistrate in their confession; and though they deny it and the crime before me, I am convinced of their criminality, the witnesses to both the thannah and fouzdaree confessions being explicit and clear in their evidence, as to the confessions of both having been distinct and voluntary.

The jury convict Beeroo and Nem of the charge of burglary and theft, acquitting all the other prisoners of the charges against them; in this verdict I concur. There is nothing against prisoners Nos. 11, 12, 13 and 14, except their own confessions in the mofussil, a species of evidence I am always unwilling to accept unless backed by other strong circumstantial proof. In the present instance I place no faith in the identification of the few scraps of old cloth found in their houses, and find no confirmation of the bad characters imputed to them by the magistrate; I willingly therefore acquit them. The prisoners Beeroo No. 9, and Nem No. 10, are convicted on their own voluntary confessions before the magistrate confirmed by the finding of well identified property in their possession. I sentence them to five years' imprisonment, with labor and irons, and to a fine of rupees 142-11-9, being the amount of stolen property not recovered.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoners have appealed, but without stating any grounds of objection to the proceedings or sentence of the sessions court. I have examined the record, and find the proof against both the prisoners complete. There is not the slightest ground for doubting their well-attested confessions, which were made to the magistrate on September 19th, after having been made to the police on September 15th, and were supported by the finding in their possession of articles of stolen property that were distinctly identified. On the trial even before the sessions judge, the prisoner, No. 9, Beeroo, while denying that he had committed the burglary, admitted that he had kept the stolen property.

The appeal is rejected.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT AND BHOJOO RAWUT

versus

DHANNEE SONTAR.

BHAUGULPORE.

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Case of DHANNEE SONTAR.

Prisoner convicted of culpable homicide, there being no evidence of the *intent to kill*, nor that the blows struck were likely to cause death.

CRIME CHARGED.—Wilful murder of Foohee Gwallah.

Committing Officer—Mr. R. O. Heywood, magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 1st April 1853.

Remarks by the sessions judge.—Prisoner pleads "*not guilty.*" Prosecutor is own brother to deceased, who was a cattle-herd, a hale middle-aged man. On the evening of the day in question, the 27th of February 1853, the cattle under his charge came home alone. Prosecutor searched for him in vain for three days, and then gave notice of his loss at the thannah (March 2nd), after which he a second time asked Bissoo and Dhannee if they knew any thing of deceased. They had before denied all knowledge of what had become of him; but now told a story of a burnt tree in their field having fallen upon and killed him, and that they had taken away the body and hid it in the *jungle*. They pointed out the spot and the body which was much swollen and decomposed. There was a large contused wound on the back part of the head. The body was sent into the sudder station, but was too far gone for examination by the civil assistant surgeon. On being taken to the thannah the prisoner Dhannee confessed to having killed the deceased, Foohee, by three blows with a heavy *lattee* produced in court, because Foohee had driven about twenty head of the cattle under his charge into the *sursoo* field of his (Dhannee's) brother-in-law, Bissoo; that on finding Foohee was dead, they Dhannee and Bissoo slung his body on a *pole*, and carried it into the *jungle*, where they hid it. Bissoo and Dhannee were both apprehended; but on Dhannee confessing to having committed the crime singly, Bissoo was admitted as a witness. The magistrate remarks in his final proceeding on the impropriety of this arrangement; but, under all the circumstances of the case, refuses to alter it. Bissoo is confessedly an accessary after the fact; but much allowance must be made for the fears and ignorance of the race to which he belongs, who are in a semi-civilized state, mixing little with the rest of the population, and inhabiting only such waste and *jungle* lands as, from their unhealthiness or unproductiveness, have been rejected by the older cultivators. I agree with the magistrate that his admission as witness is likely to be more conducive to the

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ends of justice, than his committal as accessary after the murder. His evidence is distinct as to Dhannee having confessed the murder and the hiding the body in the *jungle*. The evidence throughout is merely circumstantial; but all strongly corroborative of the confession made before the magistrate which is duly attested and may be received as conclusive evidence against the prisoner, though before this court, he reverts to the former story of deceased having been killed by the falling tree.

The mofussil inquest on the body of deceased was carefully conducted, and duly deposed to before this court. There is some discrepancy as to the number of wounds on the head, some say three, some two, and the *soorathal* describes only one large wound six fingers long and broad and one finger deep. The body was at the time much swollen, and such discrepancies among ignorant witnesses are not to be taken as invalidating their general testimony. There is no doubt in my mind but that deceased's skull was fractured by a blow from a heavy *lattee*. Prisoner confesses to have struck him one such blow which instantly caused death, and afterwards to have carried the body into the jungle, which is corroborated by the witness Bissoo, and subsequent finding of the body on the spot indicated.

The jury acquit him of the charge of murder, bringing in a verdict of culpable homicide, from which I dissent.

The crime is clearly murder, resulting from a violent assault and subsequently concealed, unpremeditated probably and unaccompanied by any aggravating circumstances. Taking into consideration, therefore, the prisoner's race, their general ignorance, and the unfrequency of crime among them, I would suggest a punishment of fourteen years' imprisonment, with labor in irons, as fully adequate to the circumstances of the crime committed.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).---The sessions judge does not distinctly explain why he considers the act proved in this case to have been murder. There is no evidence to the cause or manner of death beyond the prisoner's own statements in his confessions, and these are to the effect, that the deceased having driven a number of cattle in order to devour the *sursoo* crop standing in a field, belonging to the prisoner's brother-in-law, in which he, the prisoner, was at the time employed, he struck him one or two blows with a *lattee* on the head, of which he died. The *intent to kill* is not established on the record, nor is there evidence that the blow or blows were such as that the prisoner must have

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known them to be likely to cause death. There was provocation too from the wanton driving of the cattle into the *sursoo* field.

I convict the prisoner of culpable homicide, and sentence him to imprisonment for seven years with labor and irons.

PRESENT:

J. R. COLVIN, ESQ., *Judge*.

MUNNOOLOLL AND GOVERNMENT

versus

SEEBOO No. (23), HORIL (No. 24), SONEPHOOL, (No. 25) AND JEETUN No. 26).

BHAUGULPORE.

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Case of SEEBOO and others.

Conviction of four prisoners as accomplices in burglary and theft upheld in appeal.

CRIME CHARGED.---1st count, Nos. 23 to 26, burglary and theft of property, valued at Company's rupees 290-12-6; 2nd count, prisoners Nos. 25 and 26, having in their possession stolen property, knowing the same to have been obtained by the above burglary and theft.

CRIME ESTABLISHED.---Accomplices in the burglary and theft of property valued at Company's rupees 290-12-6.

Committing Officer—Mr. A. Hope, officiating magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 25th January 1853.

Remarks by the sessions judge.---Prisoners plead "*not guilty*."

Munnoololl, putwaree of Goureepore, was sleeping in the verandah of his house with his family; towards morning his son a boy of about eight, awoke him saying, that he heard a noise inside as if a dog were eating the *ghee;* on this, he, Munnoo, got up and lighting a lamp, went inside the house and found that a whole had been made in the wall, large enough to admit a man, *petarrah* broken open, and his property consisting of rupees 100, in cash, gold and silver ornaments, &c., &c., stolen. This was between three and four of the night of Wednesday the 15th, or morning of Thursday the 16th of Assin, on which date, he gave notice at the thannah.

Early on the morning of the 16th Assin, some men (witnesses 3, 4 and 18,) at work in the fields near mouzah Mojee, about five coss from Goureepore, where the burglary was committed, saw some suspicious looking characters crossing the fields, and beginning to question them, they run away. Witnesses pursued, and coming up to them recognized prisoners Sonephool and Jeetun, on whose persons were found a pair of silver anklets, some cloth and a *scind kattee,* they first took them with these things to the village of Mojee and then were taking them off to the thannah of Begoo Seraie, when they met the jemadar of

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the thannah, who was accidentally at Burcearpore, and made them over to him.

The prisoners while on the village acknowledged the theft and accused Horil, prisoner No. 24, of being their accomplice and having the greater portion of the property, Horil was then apprehended and his wife having pointed out Seeboo as also one of the gang, he too was apprehended, these latter Seeboo and Horil are of mouzah Seetree, four or five coss from Mojee; they confessed both at the thannah and before the magistrate, and their confessions at both places are clearly and severally deposed to in this court by witnesses Nos. 5, 6, 8, 9, 10, 12 and 13.

It will be seen from the calendar that Sonephool and Jeetun, prisoners Nos. 25 and 26, were apprehended on the 14th of October, that is on the 16th of Assin, the morning immediately following the night of the burglary, while Seeboo was not taken into custody till the 20th, and Horil not till the 31st of the same month.

It further appears in evidence, that when Sonephool and Jeetun were apprehended and taken into the village of Mojee by Bheem, Omrao and Dhowbe, (witnesses, 3, 4 and 18) Bheem immediately gave notice of their apprehension to his zemindar, Goorpershad, who lives in Burcearpore, close to Munnoo, prosecutor's house, and who having heard of the burglary immediately sent on to inform Munnoo of what he had heard from Bheem.

Witnesses Nos. 3, 4, 5, 6 and 17, depose to the recovered stolen property being pointed out by Seeboo in a ditch near his house, and identified as the property of prosecutor.

Prisoners Seeboo, No. 23, and Horil, No. 24, deny the crime and repudiate their former confessions; Sonephool, No. 25, states, that Pulhoo, son of Bheem, witness No. 3, was in the habit of driving his cattle into his (prisoner's) rice field, and that he once struck him in consequence; that on the morning in question, he had gone to visit his rice field, when Bheem came to question him about striking his son and ended by beating, and accusing him of this theft; further, that Bheem is his enemy, because his (prisoner's) father once got Bheem imprisoned for fifteen days. Jeetun, No. 26, states that he knows nothing of the burglary, that Omrao Dosadh, (witness No. 4,) came to his house and told him that Bheem had called him, that he went accordingly to Bheem's house, when Bheem accused him of the theft and had him taken up in consequence; that the stolen property was brought by Bheem from his own house to his (prisoner's), and that Bheem had previously sent off to tell Munnoo, prosecutor, that his house had been robbed by Sonephool and Jeetun.

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The jury bring in a verdict against all the prisoners of being accomplices in the burglary and theft, charged in the calendar.

In this verdict I agree, there is no direct proof of any of the parties actually having committed the burglary, or entered the premises of the prosecutor; but complicity in the crime is distinctly brought home to all. Sonephool and Jeetun are found the next morning making their way home with part of the property stolen from Munnoo Lall's house and a *seind kattee* on their persons; they implicate Horil through whom again Seeboo is accused: Seeboo and Horil both of them confess to have been cognizant of, and to have assisted in, the crime before the magistrate and at the thannah, and the former points out the hiding place of part of the goods stolen; neither, however, confess to have actually perpetrated the burglary and theft. Under these circumstances, I convict all the prisoners of being accomplices in a burglary and theft of property to the amount of rupees 290-12-6, from the house of Munnoo, and sentence Seeboo, No. 23, Sonephool No. 25 and Jeetun, No. 26, to be imprisoned for five (5) years' with labor in irons, and Horil as chowkeedar of his village, to seven (7) years' imprisonment with labor in irons; a fine of rupees 268-8, to be levied from them all singly and collectively.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. R. Colvin.)---The prisoners have appealed without stating any grounds. The evidence on the record fully sustains the conviction as regards them all; No. 25, Sonephool, and No. 26, Jeetun, were apprehended several hours after the commission of the burglary, at a considerable distance from the spot, but making off with part of the stolen property in their possession and a *seind kattee*. This establishes, though there is no direct evidence and they have not confessed, a sufficient presumption against them of participation in the perpetration of the burglary to justify their conviction upon that count. The appeals are rejected.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

HIMUT ALLI AND GOVERNMENT
versus
PUNNOO.

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Case of PUNNOO.

Prisoner convicted of having in his possession ornaments knowing them to have been acquired by wilful murder, sentenced to transportation beyond sea for life.

CRIME CHARGED.—1st count, theft attended with wilful murder of Moosahib boy, for the sake of his ornaments, valued at rupees 10-8; 2nd count, theft of ornaments valued at rupees 6-8 the same being a part of the aforesaid property belonging to the deceased boy; 3rd count, having in his possession a portion of the above-mentioned ornaments, valued at rupees 6-8 knowing it to have been acquired by the wilful murder of the aforesaid boy.

Committing Officer—Mr. A. G. Wilson, deputy magistrate of Nowada, Zillah Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 17th March 1853.

Remarks by the sessions judge.—The prosecutor and prisoner were opposite neighbours, residing in the town of Nowada. On Tuesday afternoon, the 18th of January last, the deceased, the prosecutor's son, a child of about five years of age, who wore armlets and anklets of silver, was missing. The father was absent at his fields and the child was last in charge of Chumun, (witness 18,) the prosecutor's cousin, and who reside together. Chumun was engaged in cutting up some fire-wood he had brought down from a tree on the premises. He then missed the child, whom he had last seen playing with the prisoner, and went about making enquiries after him. When returning unsuccessful, he met the prisoner, who said, he knew nothing about the child. The child was no where to be found. Information was then given at the thannah by Meghun chowkeedar, (witness 17). Next morning, Wednesday, the 19th, after search by the police in various directions, the child's body was discovered in a well* occasionally used for irrigation, but then surrounded with *urhur* cultivation, close to the prisoner's mustard field. The inquest, No. 3, without date, but accompanying the darogah's report, No. 2, of the 19th, which is countersigned by the deputy magistrate on the same date, describes the body as shewing no marks of violence, apparently drowned, having on the clothes and articles usually worn, including two iron rings, but without the silver ornaments. With this discovery, suspicion fell on the prisoner, and he was forthwith apprehended, but in his defence the evening of the same date,

* Distant about quarter of a mile from the prosecutor and prisoner's dwellings.

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the 19th, he denied all knowledge of the crime. Witnesses 1 to 8, testify to the foregoing particulars. Thursday, the 20th, passed by without further disclosure. According to Udjoodhyapershad, darogah's (witness 30,) deposition before this court, he had endeavoured to obtain some information from Mussumat Nuseebun, the prisoner's concubine, both on the 18th and 19th, but without success, and it was not until the 21st, when the evidence according to the darogah became fuller, that the child had been last seen in the prisoner's company, that she gave evidence, (No. 6,) to the prisoner having brought her two rings to keep, which she declining, he took them away again. The darogah at once brought her before Mr. Wilson, the deputy magistrate, as per his proceedings of 23rd February last, between 10 and 11 A. M. when she again repeated the same evidence. The darogah then returning to the prisoner and questioning him thereon as per his supplementary defence of that date, in presence of the subscribing witnesses 9, 10, 11 and 33, he denied having shewn Musst. Nuseebun any thing; but that he had observed a stranger sitting in his mustard field close to the well, who on seeing him went away. Perhaps he had buried something there, which on search might be forthcoming. On this the prisoner took the party to the field and there, after some hesitation, produced two of the armlets slightly buried below the surface of the ground and the rest cut up in ten pieces, as produced in court and recognised by witnesses 14 to 16, as those worn by the deceased. Witnesses 9 to 13, the darogah himself, Nos. 30 and 31 to 33, gave evidence to the foregoing effect. The prisoner together with a report of what had thus happened (No. 8) was at once forwarded to the deputy magistrate. The evidence of the remaining witnesses 19 to 24, either concerns the childs having been last seen in the prisoner's company, or to his having been met, returning from the fields the afternoon the child was missed, though according to their own acknowledgments they never hurried themselves to give such information in the first instance. The remaining witnesses 25 to 29, testify to the prisoner's disreputable character and questionable means of livelihood. On the prisoner's being put on his defence before the deputy magistrate on 24th following, he denied having produced the ornaments which he knew were not the deceased's, though the darogah took him to his mustard field and said they had been found there. When questioned he knew not to whom they belonged. In her supplementary evidence of the same date, Nuseebun also recanted her former evidence before the deputy magistrate of the 21st, declaring it to have been given on the darogahs tutoring.

Before this court, the prisoner pleading "*not guilty*," attributes all that had thus taken place to the machinations of

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Musst. Jannoo, the prosecutor's niece, now in the service of the deputy magistrate, who was in reality his prosecutor. This rests on his unsupported allegations* brought forward at the last moment, with the close of the trial before this court, no witnesses having ever been called by him, as he states none would support him against that functionary. He complained of Musst. Nuseebun's evidence of the 21st, having been cruelly extorted and yet blamed the deputy magistrate for having discarded her as a witness, whilst from the date of her recantation to the date of the trial before this court, nothing further has been heard of her, and it was quite discretional with himself to have summoned her as his witness had he pleased. At all events her recantation of the 24th is as faithfully recorded, as her evidence said to have been extorted from her on the 21st, and she at least could have been no unwilling witness, and she should have been a complainant, had there been a word of truth in such pretences. He attributes the recovery of the ornaments in the field to hopes of advancement by the police, and argued that he was not such a madman as to have concealed such article so difficult to find again, in a cultivated field. His cross-examination of the witnesses was entirely confined to Musst. Jannoo's relationship to the prosecutor, and her being in the deputy magistrate's employ. The former of which was as generally acknowledged as the latter was ignored. His house was searched by the police in May 1852, as he says at Musst. Jannoo's instigation. On calling for the record I find that his house was searched under the deputy magistrate's orders, and a gold coin and sixty-six rupees in cash were forthcoming. He was released by the magistrate, on 17th June 1852, and the money returned to him. In his defence before that officer of the 7th of that month, he explained that he had become possessed of this money in various services. Having thus been possessed of so much money in June 1852, it is strange unless his habits are of a disreputable kind, that he should have been concerned in the murder of a child for ornaments of such trifling value. Yet he does not trouble himself in his defence to explain away such circumstances, or rebut the evidence produced to his questionable means of livelihood. His questioning Waris Allee, (witness 16,) elicited the reply, that he, the prisoner, had been formerly his slave, whom he had turned out of doors some ten years ago.

The *futwa* of the law officer commenting on the improbability of concealing such articles in a field, which could have been more easily secreted in a house, places no reliance on the

* He was aided by Counsel.

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recovery, and noting that the darogah's deposition was not on oath (an error) and that the whole might have been got up, finds either proof or presumption against the prisoner wanting and acquits him.

The law officer is mistaken. The darogah gave his deposition on oath. The case is beset with some difficulty, consequent on the absence of direct proof of the crime and the prisoner's singular defence. Had there been a word of truth in his defence, he would scarcely have remained so long silent a passive victim, to what in that case, would have been so henious a conspiracy. He has doubtless cunningly availed himself of something on Musst. Jannoo's position to give a colouring to his defence, without troubling himself to prove it, further than by cross-questioning the witnesses for the prosecution, who mostly averred ignorance, without positively denying it, or offering further explanation regarding it, although many of them are Musst. Jannoo's connections. On a copy of the prisoner's defence being furnished to the deputy magistrate for his information, he also passes it over in silence as irrelevant. When nothing positive appears in refutation of such matter, doubts are thus left on the record. But even if there were tenable grounds for supposing such sinister influences to have existed, it is scarcely credible they could have worked undetected under the deputy magistrate's own eye, every thing that had happened, having taken place almost within sight of his own dwelling. Looking at the prosecution intrinsically, I find internal evidence of its integrity. There can be no doubt of the facts, *viz.*, of the missing child, his body being found in the well close to the prisoner's field, at such a distance from his home the following day, robbed of his ornaments, and lastly, Nuseebun's information before the deputy magistrate indirectly acknowledged by the prisoner himself, and which originated his production of the ornaments of which the deceased had been robbed. I place little weight on the evidence as to the missing child having been last seen in the prisoner's company, as it is both indistinct and unconnected, and of itself alone, at the time itself, led to no suspicion against the prisoner, who, it is manifest, was not suspected, and apprehended until after the discovery of the body in the well the following morning; but I do rely on the evidence as to the prisoner's having given up the child's ornaments out of his mustard field close to that well. Proof of the prisoner's guilt, however, extends no further. Most of this evidence has been elicited under examination before this Court. It has been given by indifferent careless witnesses, the discrepancies in whose evidences at least show, that they have not been tortured ones. Taken altogether, I gather that the investigation was being conduct-

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ed by the darogah in a garden four to five *russees* distant from the field. It was thence the darogah took Nusseebun before the deputy magistrate, and on his returning to the garden, after his having done so, and questioning the prisoner thereon, it was then he set up the pretence he did, volunteering to examine his field. I find nothing inconsistent or improbable in such an act, self-condemnatory as it is by what followed in his discovering the ornaments on the spur of the moment, when thus separated from his concubine, of whose discretion before the deputy magistrate he could not feel certain. What then followed was rapid and consistent enough. The prisoner at once produced the deceased's ornaments out of his field, and he was as immediately forwarded to the deputy magistrate together with these proofs of his guilt as vouched for by report No. 8, at 12 A. M. Nusseebun having been taken before the deputy magistrate between 10 and 11 A. M. It may be regretted, that the deputy magistrate himself so close at hand, was not himself present at such a discovery, but this omission in itself bespeaks consistency. From the nature of the pretence set up by the prisoner before proceeding to the field, it must have been very doubtful, whether any thing would have come of it, and when the discovery took place, nothing further remained to be done than to send the prisoner forthwith before the deputy magistrate as already shown. The prisoner's plea as to the difficulty of his finding such articles in a cultivated field, may apply to any one else besides the owner of such field, who alone could possess a facility for their guilty concealment in such a place, as he did for finding them there in the manner deposed to by so many witnesses. I differ altogether from the law officer as to its having been an improbable place for the concealment of such articles by the prisoner. It was a very probable one, considering its local difficulties as thus commented on by the prisoner himself, who in addition to the experience he had obtained of having seen the world and made money in repeated change of services, was no ignorant clown, and had also heretofore and only lately too been in trouble from his house having been searched by the police. I convict the prisoner on strong presumption under the 3rd count, of having in his possession a portion of the deceased's ornaments, valued at rupees 6-8, knowing it to have been acquired by the wilful murder of the deceased, and arriving at such conclusion, I am unable to suggest, any other sentence for such a crime short of imprisonment for life in transportation beyond sea.

Remarks by the Nizamut Adawlut.—(Present : Sir R. Barlow Baronet.)—There is no doubt of the prisoner's guilt, at least to the extent of his conviction by the session judge. The prisoner

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indirectly confessed the deed, and before several persons produced the silver ornaments from his mustard field in which they were buried. The property was at once recognized by the prosecutor and several others, as was the boy's corpse, which was found in a well, stripped of all the ornaments the boy used to wear. The prisoner in the sessions court pleaded he was beaten and ill-used, but cited no witnesses. He accused the deputy magistrate of certain irregularities; that officer denied the truth of the allegations, and the sessions judge has considered them false. I confirm the sentence proposed by the sessions judge.

The court observe, that the sessions judge is in the habit of taking several supplemental answers and depositions, which are to be found here and there dispersed through very lengthy proceedings. If examination on various dates is necessary, the whole should be recorded in one place. Much time is wasted in searching after these scattered bits of the record, and it is exceedingly inconvenient to get at them while there is some risk of a portion being overlooked.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND KHEPO MUGH *versus* NYOMUDDY SHEIK.

24-PERGUNNAHS.

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Case of NYOMUDDY SHEIK.

The prisoner was convicted of theft and sentenced to 5 years, imprisonment with labor in irons. As the proof rested solely on the confessions of the prisoner, and as according to these confessions (with a trifling exception) the whole sum stolen had been recovered, the order of the sessions judge, imposing a fine under Act XVI. of 1850, for the recovery of a further sum, was reversed.

CRIME CHARGED.—1st count, theft of rupees 515, in cash, belonging to the prosecutor Khepo Mugh; 2nd count, receiving a part of the above money knowing it to have been stolen.

CRIME ESTABLISHED.—Theft of rupees 515, in cash, belonging to the prosecutor.

Committing Officer---Mr. E. A. Samuells, magistrate of the 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of the 24-Pergunnahs, on the 20th January 1853.

Remarks by the additional sessions judge.—The prosecutor had come from Chittagong, and the prisoner proposed to act as his *dalal* in buying king-fishery feathers, and learnt from him that he had cash to pay for them, and where he kept it, and he took an opportunity to unlock the box in which it was placed and steal, as he acknowleged, Co.'s rupees 362 ; but the prosecutor stated his loss to be Company's rupees 515. The prisoner spent Company's rupees 360-15, of the money in buying gold-mohurs which were received from his possession. When the prosecutor found out his loss, he informed the police of it, and the prisoner was apprehended ; and the same day he confessed before the darogah, and he repeated his confession when he was taken before the magistrate. He is found guilty on these confessions. The prosecutor at first stated, that his loss was rupees 515, and he has continued to do so ; but there was no other proof that it was more than rupees 360 ; but I believe the deposition of the prosecutor, and have directed that the sufferer be reimbursed to the extent of the wrong which appeared to me to have been done to him, by a fine imposed on the prisoner under Act XVI. of 1850.

Sentence passed by the lower court.—Five years' imprisonment with labor and irons, and a fine of rupees 515, under Act XVI. of 1850, exclusive of the amount which may be realized from the property which has been recovered.

Remarks by the Nizamut Adawlut.---(Present : Mr. J. Dunbar.)---I see no necessity to interfere with the sentence so far as it regards the period of imprisonment with labor in irons, but the order imposing the fine under Act XVI. of 1850, must be reversed. The proof in this case rests entirely on the

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confessions of the prisoner. These go only to the admission of the theft of rupees 362, the whole of which sum, (with the trifling exception of one rupee one anna,) has already been recovered; and there is nothing on the record to lead the Court to suppose, that the prisoner has not made a full confession of his guilt.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

MUSSUMMAT KASHEEPREAH AND GOVERNMENT

versus

SHEIKH KHOSAUL (No. 1, APPELLANT,) SHEIKH DHUNNIE (No. 2), SHEIKH KETABOODDEEN (No. 3), AND SHEIKH MUNEEROODDEEN (No. 4).

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Case of SHEIK KHOSAUL & others.

Conviction of four prisoners as accomplices and accessaries after the fact to the crime of culpable homicide upheld in appeal.

CRIME CHARGED.—1st count, Wilful murder of Soobul Mundul son of the prosecutor; 2nd count, with being accomplices, aiding and abetting in the same.

CRIME ESTABLISHED.—Being accomplices and accessaries after the fact to the crime of the culpable homicide of Soobul Mundul.

Committing Officer—Mr. T. Tweedie, deputy magistrate of Moonsheegunge, zillah Dacca.

Tried before Mr. H. T. Raikes, officiating commissioner with powers of a sessions judge, zillah Dacca, on the 17th January 1853.

Remarks by the officiating commissioner.—It appears that the deceased had for some time carried on an intrigue with the witness Sobha (a widow) whom he was in the habit of visiting at night. On the night in question he had gone to her house, and had apparently been watched by one or other of the prisoners who gave notice of his being there, to the rest; for they then surrounded the house and demanded admittance. Sobha refused to open the door, and the prisoner Dhunnie then broke it open, and Khosaul sending Muneerooddeen for a light, Dhunnie followed the deceased to a *mechan* where he had attempted to hide himself, and where a struggle ensued between the two which brought them both to the ground. The prisoners Khosaul, Dhunnie and Ketabooddeen then set upon him and assaulted him with their fists, and Khosaul is said to have struck him a blow with a bludgeon he had in his hand, Muneerooddeen at the time standing by but taking no active part in the assault. The prisoners after beating the deceased took him away towards the house of Dhunnie, and beyond this the witnesses know nothing The prisoners however in their confessions to the Police

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and repeated before the magistrate, admit having assaulted the deceased in Sobha's house, and having removed him to a short distance where he died; they then took him to Dhunnie's house and procured a boat, in which they placed the body and drowned it in the Kirteenasa river by means of a bag filled with earth attached to the body. The prisoners pleaded not guilty in this court. But the above facts were satisfactorily proved and there is no reason to doubt the truth of the confessions of the prisoners. The witnesses who are neighbours of the parties concerned state, that it was generally believed, the deceased had intrigued with the prisoner Khosaul's wife, who thus became pregnant during her husband's absence. The prisoner Khosaul himself denied this, and in his confessions assigned no other reason for their conduct than a wish to punish the deceased for the disgrace he had brought upon Sobha's husband's memory who was his friend.

There was no relationship between the prisoners and this woman's deceased husband or herself.

The Moulvie returned a verdict of aiding and abetting in culpable homicide and accessaries after the fact against the prisoners Nos. 1, 2, 3, and accomplice and accessary after the fact against No. 4. I concurred in the finding, but as Khosaul had evidently been the chief instigator and Muneerooddeen took a less active part than the others in the assault, I awarded to them respectively a different measure of punishment.

Sentence passed by the lower court.—No. 1, seven (7) years' imprisonment with labor. Nos. 2 and 3 each to five (5) years' imprisonment with labor, and No. 4 to be imprisoned without irons for three (3) years and to pay a fine of fifty (50) rupees within a month, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present Mr. W B. Jackson.)—I see no reason to interfere with the sentence passed on the prisoner *Khosaul*.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT ON THE PROSECUTION OF BINDOO-HASINEE DEVEE.

versus

CHEEDAM DASS TANTY No 1 OOTTUM DASS TANTY, No. 2 AND PITTEMBER TANTY No. 3, (NON-APPELLANT.)

24-PERGUNNAHS.

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Case of CHEEDAM DASS TANTY and others

The prisoners were convicted of riotous assault, causing death. The sentence of the sessions judge confirmed in appeal.

CRIME CHARGED.—1st count, culpable homicide of Mudhoosoodun Bhutto, the prosecutix's husband; 2nd count, being accomplices in the above crime; 3rd count, riot accompanied with culpable homicide.

CRIME ESTABLISHED.—Riotous assault on the person of Mudhoosooddun Bhutto, during which he died.

Committing Officer—Mr. E. A. Samuells, magistrate of the 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of the 24-Pergunnahs on the 13th January 1853.

Remarks by the additional sessions judge.—The prisoners Nos. 2 and 3 are servants of Cheedam Dass No. 1. On the evening of the 19th of September the deceased man Mudhoosoodun Bhutto, and a man called Sreeram Bhuttucharjee, and a prostitute called Ooma Thakooranee went to the house of Cheedam Dass and were accommodated with a room in which they drank wine, and in which they were joined by the three prisoners. The woman Ooma states that Mudhoosoodun was one of the drinking party, and two days after this occurrence the body of Mudhoosoodun was found in a ditch not far from the house of Cheedam. The prisoner Pittember, No. 3 was apprehended on the 22nd of September. Cheedam No. 1 was apprehended on the 23rd of September, and Oottum on the 24th of September, and on the following day, Nos. 1 and 3 confessed that a party of six persons got drunk together, and owing to Mudhoosoodun having taken liberties with the woman Ooma, a dispute and affray took place, when Mudhoosoodun escaped from the house, but the others went out and made a riotous assault on him in the midst of which he died suddenly, they threw the body into a tank, and the next day the prisoners all joined in removing it to the ditch were it was found. The prisoner No. 2 did not state that he took a part in the attack, but he helped to remove the body, and was a witness to all the circumstances of the case both before and after the death and held a light to the others. On the 26th of September they were taken before the magistrate and Nos. 1 and 3 confessed that they joined in beating Mudhoosoodun and No. 2 stated that he looked on, and all confessed that they helped to remove the body. There

is no intimation given by any party of any enmity between the parties. The body was much decomposed, that the cause of death could not be determined, there were marks apparently of burning on the body which are said to have been caused by a daughter of Cheedam having poked the dead body with a lighted stick to find out whether any life were left in it. When Mudhoosoodun got out of the house, he was afterwards said to have been found standing under a tree. If he were on his feet he might have escaped unless he was too much overcome by the effects of wine which he had drank. It may be that he was found in a state of insensibility from drink or apoplexy or any internal rupture. The case rests entirely on the confessions of the prisoners and the only decision that I can come to is, that they are guilty of riotous assault on the person of Mudhoosoodun Bhutto during which he died.

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Case of CHEEDAM DASS TANDY and others.

Sentence passed by the lower court.---To be imprisoned without irons for (2) two years each, and to pay a fine of one hundred (100) rupees each within two weeks or in default to labor.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. Dunbar.)---Two of the prisoners have appealed. They state in their petition of appeal that they have been put in irons. This I apprehend is a mis-statement, as the sentence distinctly mentions imprisonment without irons. The court see no reason to interfere, further than to bring the assertion of the prisoners to the notice of the magistrate through the sessions judge.

PRESENT:

J. DUNBAR, Esq., *Judge.*

KYLASCHUNDER CHATTERJEE AND GOVERNMENT *versus* MUTHOOR BAGDEE CHOWKEEDAR.

24-PERGUNNAHS.

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Case of MUTHOOR BAGDEE CHOWKEEDAR.

The prisoner was convicted of highway robbery, and sentenced to 8 years' imprisonment with labor in irons.

CRIME CHARGED.—Highway robbery upon the plaintiff in which a bundle containing cloth, valued at Co.'s Rupees 36-7, was plundered.

CRIME ESTABLISHED.—Highway robbery.

Committing Officer—Mr. E. Jackson, joint magistrate of Baraset.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 5th February 1853.

Remarks by the additional sessions judge.—The prosecutor was returning to his own village from a neighbouring *haut* with a cooley, who was carrying a bundle of cloth which the prosecutor had endeavoured to sell, and when they were about $\frac{1}{8}$ of a

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coss from their village they were attacked by three men who carried off the cloth. The prosecutor called for help and persons came from his village, who state, that they heard the prosecutor accuse the prisoner on the spot. The prosecutor and the cooley both say that they recognized him. The prosecutor went the same night to a pharree which is a coss from his house, and thence with the pharreedar, to the house of the prisoner which is a coss from the pharree, and the prisoner was at once apprehended. The bukshee was afterwards informed of the circumstance and as soon as he had leisure from other duty, he enquired into the case and the prisoner confessed before him on the 16th of October and before the joint magistrate on the 18th of October, *viz.*: that he and two other persons committed the robbery. The prisoner was not accused of having committed the crime while holding the office of chowkeedar, but he did not deny the truth of the evidence of the witnesses to that effect, and consequently I sentenced him to a heavy punishment.

Sentence passed by the lower court.---To be imprisoned with labor and irons for fourteen (14) years.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. Dunbar.)—The conviction is good, resting both on strong direct evidence and on the repeated confessions of the prisoner. As no serious corporeal injury was sustained, however, either by the prosecutor or the coolie, the punishment awarded by the sessions judge appears to be more severe than was requisite under the circumstances. I accordingly reduce the term of imprisonment to eight years.

PRESENT:

W. B. JACKSON, Esq., *Judge.*

GOVERNMENT

versus

MONSHAD SHEIK BURKUNDAUZ.

MOORSHEDABAD.

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Case of MONSHAD SHEIK BURKUNDAUZ.

Acquittal of charge of perjury, the contradictions alleged not being proved, inasmuch as the one statement referred to a party of persons and the other to one individual among that party.

CRIME CHARGED.---Perjury in having on the 8th October 1852, corresponding with 24th *Assin* 1259, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of zillah Moorshedabad, that he heard Chunder Nath issue orders from the western side of the mangoe garden, to beat, murder, and to plunder the factory, and that he heard him give the order from a distance of four or five *russees;* and in having on the 14th January 1853, corresponding with 2nd *Magh* 1259, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the sessions judge of the zillah, that he did not hear whether Chunder Baboo at the time of the attack ordered the plunder of the factory or not, such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer---Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. J. Money, sessions judge of Moorshedabad, on the 21st March 1853.

Remarks by the sessions judge.---The prisoner pleaded "*not guilty.*"

The particulars of the case are as follows:

This case was prosecuted on the part of Government.

The prisoner, Monshad, was a police burkundauz, sent in as a witness in a case of riotous assault.* On the 8th of October 1852, in his deposition under a solemn declaration taken instead of an oath before the magistrate of Moorshedabad, the prisoner intentionally and deliberately stated, that he heard Chunder Nath issue orders from the western side of the mangoe garden, to beat, murder, and to plunder the factory, and that he heard him give the orders from a distance of four or five *russees;* and on the 14th of January 1853, corresponding with 2nd *Magh* 1259, he again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the sessions judge, that he did not hear whether Chunder Baboo, at the time of the attack, ordered the plunder of the factory or not, such statements being contradictory of each other.

Essan Chunder Roy and Chunder Mohun Chaterjea, two of the vakeels of the judge's court, who were present when

* Mr. J. P. Hampton, *v.* Ramloll Mookerjea and others.

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the prisoner's deposition was taken in the sessions court, swore to the same being exactly what the prisoner had deposed, and from the evidence of Nubeen Chunder Bundopadhy and Chunder Kanth Mookhopadhy, mohurrers of the Fouzdary Court, by whom the prisoners deposition was taken down before the magistrate, and who stated that the deposition was exactly what he had deposed, it was proved, that the prisoner had intentionally and deliberately given a false deposition on a point material to the issue of the case. The *futwa* of the law officer convicted the prisoner on legal proof of perjury, and declared him liable to *tazeer;* in which finding I concurred. The prisoner had been wounded on the attack on Mr. Hampton's factory, and was the only police officer that faced the assailants. I would recommend one (1) years' imprisonment with labour, as sufficient punishment under the circumstances.

Remarks by the Nizamut Adawlut.---(Present: Mr. W. B. Jackson.)---This is a charge of perjury in making two contradictory statements; the statements are thus entered in the charge. Perjury in having on the 8th October 1852, corresponding with 24th Assin 1259, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of zillah Moorshedabad, that "he heard Chundernauth issue orders from the western side of the mangoe garden to beat, murder, and to plunder the factory, and that he heard him give the order from a distance of four or five *russees*," and in having on the 14th January 1853, corresponding with 2nd Magh 1259, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of this zillah, that "he did not hear whether Chunder Baboo at the time of the attack ordered the plunder of the factory or not." Such statements being contradictory of each other on a point material to the issue of the case

Now on referring to the depositions I find them to run thus:

Before the Magistrate.

Question. On what side did you see Chundernauth and Neil Madhub and Mohesh Chuckerbutty and Gunesh Gangolee, and what were they doing?

Answer. On the west, near the mangoe garden; they gave orders to beat and kill, and plunder the factory.

Then some other questions and answers follow and afterwards.

Q. How far off were Chundernauth and Mohesh Chuckerbutty &c., when you heard them say this?

A. I heard them from a distance of four or five russees (about 200 yards.)

Before the Sessions Court.

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Q. At the time of the assembly and attack did you hear Chundernath order them to plunder?

A. I did not hear him with my own ears.

On his defence the prisoner says, that he really did hear him; but that is not the point at issue, the point is simply the contradiction in the two statements on oath.

Now it is to be observed, that in the deposition before the magistrate the questions are put in a vague manner; they relate to the particular acts of four different persons in a large tumultuous assembly, and are put with a view to elicit information as to the degree of criminality of each person, and yet the whole four are lumped up in one question, to which a similarly general answer is given, that they were to the west, near the mangoe grove, and gave orders to beat, kill, and plunder the factory. I do not understand that this means that each individual among those four persons used the three words, beat and kill, and plunder; but that they called out, some one thing some another, which would no doubt make them all answerable for the effect of the joint order given; the second question as to the distance is put in a more vague manner still, two of the parties being mentioned with an *etcetera* to represent the rest; to which in the same manner a general answer is given, that they, including the *etcetera*, were four or five *russees*, about 200 yards off; now it is plain, that the questions are put so as to give the idea that they related to the body of men, and the answer is naturally and fairly given in the same general way, they, the party consisting of 4 men, were 200 yards off me, and I heard them give orders to kill and beat, and plunder, this is the only fair construction which can be put on such a deposition.

Then again in the sessions deposition when the witness is asked a special and particular question as to Chundernauth alone:—Did you hear Chundernauth at the time of the attack order them to plunder, he answers, "I did not hear him *with my own ears*;" it seems to me that he meant by this that he cannot say positively that he heard Chundernauth use the words in question, but this is not in my opinion inconsistent with the previous statement, that he heard from a distance of 200 yards a party of men of whom Chundernauth was one, tell the others to beat, kill and plunder; the affirmative statement relates to a party of four, the questions being shaped as to point the answer to the whole party; the negative statement relates to one individual person among that party, the question being also so put as to limit the answer to that individual; there is therefore no contradiction. It is plain even from the nature of the defence, that the prisoner was not able to explain to the Court the diffi-

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culty he lay under of shewing his statements, were not inconsistent; as an unlettered person he told his story in a fair straightforward manner, and seems to the last surprised to find himself charged with perjury. It should always be held in mind, that a charge of perjury on the ground of contradictory statements cannot be sustained unless the statements are directly opposed one to the other, and the precise weight and value of an answer very much depends on the nature of the question to which it refers.

I acquit the prisoner of the charge, and have the more satisfaction in doing so, because he seems to have been the only man among the police who really exerted himself at the riot, and was wounded in the discharge of his duty.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

BISTOORAM KOONDOO AND GOVERNMENT

LUCKHUN KOMAR.

WEST BURDWAN. 1853. April 29. Case of LUCKHUN KOMAR. Prisoner convicted of knowingly receiving property acquired by dacoity, sentence passed by the sessions judge confirmed in appeal.

CRIME CHARGED.----Knowingly receiving and having in his possession property acquired in a dacoity committed at the house of Bistooram Koondoo, prosecutor, on the night of 5th October 1852, corresponding with the 21st Assin 1259 B. S., in which property valued at rupees 782, 4 annas was plundered.

CRIME ESTABLISHED.—Knowingly receiving and having in his possession property acquired in a dacoity committed at the house of Bistooram Koondoo, prosecutor, in which property valued at rupees 782-4 was plundered.

Committing Officer—Mr. W. J. Longmore, officiating joint Magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 19th January 1853.

Remarks by the sessions judge.—On the night of the 21st Assin 1259 B. S., corresponding with the 5th October last, a dacoity was committed in the house of the Prosecutor, and property of considerable value carried off. Some of the inmates of the house were violently treated by the dacoits, but received no serious injury. Before the thannah people arrived, the prosecutor and his nephew had traced the robbers, to a place on the other side of the Dalkessur river, where they found signs of partition of the spoils, in the shape of three small jewels of gold and silver which must have been dropped in the dark. After the darogah of thannah Oomdah had made his *soorathal*, search for the robbers were proceeded

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with, as far as the village of Sibrampoor, about one quarter coss distant from the prosecutor's house. The darogah then told Haradhun Baoree, Tabedar ghatwal of Baoreesole ghat, witness No. 1, who was with him, that as the robbers had been traced into his beat, he must do his best to find them.

The ghatwal almost immediately named the prisoner, as a likely fence, and he was consequently seized, and his house surrounded shortly after the arrival of the police, the prisoner expressed an anxiety to ease himself, and was sent off into a paddy field near a tank, for that purpose. When there, he was seen by two of the party with him take a silver *huslee* out of his waist cloth and throw it into the growing rice, a few cubit from the place where he was sitting. It was seized by the above persons, and the prisoner brought back, when his house was searched and a large quantity of broken brass and bell-metal found, which as well as the *huslee* was identified by the prosecutor.

The prisoner then freely confessed, that he had received the property, as stolen goods, from certain persons whom he had named; that he had broken up the brass utensils for melting; that he had been about to set out to another village for sale of the *huslee*, when he was seized with it on his person, and that he had attempted to hide it in the *khet*, as affirmed by the witnesses.

The persons named in his confession were apprehended and their houses searched, when certain articles (chiefly *dhootees, sarrees* and other pieces of cloth) were found and identified by the prosecutor. On trial the evidence of identity proved insufficient, and the persons were consequently released by the officiating joint magistrate.

The prisoner who repeated his confession in the above terms, before the officiating joint magistrate, pleaded not guilty before the sessions court, but when called upon for his defence repeated his confession. The same, however, varied from his former ones in affirming that the *huslee* had been found inside the house, and that *all* the broken brass and bell-metal, sent in, did not form part of the stolen utensils.

Some witnesses to character &c. whom he had named in the foujdary court, were in attendance, but he declined having them examined and threw himself upon the mercy of the court.

The jury (two vakeels) found him guilty of the crime charged, upon his own confessions and the evidence adduced, and as I entirely agreed in this finding, he was convicted and and sentenced as noted.

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I may mention, that the broken brass, which was sufficiently identified, weighed much less, in the aggregate, than the brass vessels mentioned in the prosecutor's original list, as stolen from his house, and that the *huslee* was sworn to, by the man who made it.

The darogah had the mofussil confession written by a villager, instead of taking it down himself, but the record shews that this irregularity was duly noticed by the officiating joint magistrate.

Sentence passed by the lower court.---Five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.---(Present: Sir R. Barlow, Bart.,)---The prisoner confessed to having bought the *huslee* knowing it to be stolen property, before the sessions judge. Broken up brass pots, &c. were found in his house; the whole of this property was sworn to by witnesses for the prosecution. He was seen by Haroo Baoree and Beerookoond to throw the *huslee* into a corn field where he went under pretence of performing a call of nature. I confirm the sessions judge's sentence.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

GOPEE RUNJEET BUROOA.

MIDNAPORE.

1853.

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Case of GOPEE RUNJEET BUROOA.

Conviction of perjury and sentence of one year's imprisonment passed by the sessions judge confirmed in appeal.

CRIME CHARGED.—Perjury in having, on the 3rd February 1853, intentionally and deliberately deposed under a solemn declaration taken before the deputy magistrate of Nugwa, that Babooram Dass of Alunkurpore Pergunnah, Meergodah was a Mullungee by profession, a man of good character and cultivated fifteen beegahs of land, from the income of which he supported himself with a family of seven individuals, and in having on the 21st February 1853, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the deputy magistrate of Nugwa, that the said Babooram Dass was a Budmash, cultivated five or six beegahs of land, and had a family of nine persons to support, such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer—Wuheeoodeen Nubee, deputy magistrate of Nugwa, exercising powers of a magistrate, Zillah Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore on the 9th April 1853.

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Remarks by the sessions judge.—On the 8th January 1853, the police of thannah Sagressur were directed to enquire into the character of one Babooram Dass, the prisoner then deposed that to the best of his belief Babooram was a respectable character, lived within his means, and that no suspicion of any kind ever attached to him; he confirmed his statement on solemn declaration before the deputy magistrate on the 3rd February following. That officer having reason to suspect the first enquiry of the police, directed the darogah to proceed himself to the spot, and on the 18th February, he forwarded the result of his proceedings to the deputy magistrate, in which the prisoner declared that Babooram was a bad character, lived beyond his means and was a terror to the surrounding neighbourhood, which statement he affirmed on solemn declaration before the deputy magistrate on the 21st February. The prisoner on the same day admitted in his defence that he had made two contradictory statements, and that fear had prompted him to depose on the 3rd February, that Babooram Dass was a respectable character. In this court he pleads in defence that he throughout consistently deposed to Babooram Dass being a bad character, and that he is not responsible for what the Mohurrer who took his deposition may have written. The witnesses including the Mohurrer who wrote the prisoner's depositions of the 3rd and 21st February and his reply, of the latter date, establish his guilt. The assessors declare the prisoner guilty of perjury, and concurring in this finding, he is accordingly sentenced with the sudder courts approval, to one year's imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.,)---I confirm the sentence.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

RAJKISHORE DUTT (No. 24, APPELLANT) SHEBUK MISTREE (No. 21), KOODROOTOOLLAH (No. 22), AND SHEEB CHUNDER MISTREE (No. 23).

BACKERGUNGE.

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The prisoner was charged with perjury. His deposition was not duly authenticated by the magistrate as required by Clause II. Section VII. Regulation IV. 1797 and by C. O. 220 dated 27th January 1837 para. 6. Prisoner released.

CRIME CHARGED.---No. 21, perjury in having on the 26th March 1852, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the magistrate of Backergunge; First, that the prisoners Hedayutoollah, Uzzeem and Idrak were the defendants of Allee Mia a four annas share-holder. Second, that on the people of the four annas share-holder being about to attack the cutcherry of the two annas share-holder, Nusseeroodeen and Tumizzooddeen only out of ten or twelve others present protested against the proceeding. Third, that the people of the four annas share-holder had dragged away one of the adverse party.—And in having on the 15th July 1852, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Backergunge. First, that the said three prisoners were the defendants of the two annas share-holder and identified them as such. Second, that on forty or fifty people on the side of the two annas share-holder appearing to protest, the two parties met in a field and an affray took place. Third, that he cannot say which of the parties took the missing body away,—such statements being contradictory of each other on points material to the issue of the case. No. 22, perjury in having on the 26th March 1852 intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the magistrate of Backergunge. First, that only Nusseerooddeen and Tumizooddeen on the part of the two annas shareholder protested. Second, that Bhoyrub Chunder Sandial was the chief leader and ordered his men to enter into the cutcherry and identified him as such; and in having on the 15th July 1852, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the sessions judge of Backergunge. First, that on twenty-five or thirty people on the part of the two annas share-holder being opposed to the other party an affray took place. Second, that he never said that Bhoyrub Chunder Sandial was the chief leader and had ordered his men to enter into the cutcherry and that he did not then, and cannot now, identify the said Bhoyrub Chunder Sandial,—such statements being contradictory of each other on points material to

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the issue of the case. No. 23, count first, perjury in having on the 26th March 1852, intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the magistrate of Backergunge, that there were about twelve or fifteen men on the side of the two annas shareholder and that out of these, Nusseerooddeen and Tumizooddeen only protested; and in having on the 14th July 1852, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Backergunge, that there were about 50 men on the side of the 2 annas shareholder and that on their being opposed to the other party an affray took place,---such statements being contradictory of each other on points material to the issue of the case. Count 2nd, perjury in having on the 14th July 1852 intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Backergunge, that he did not see Heedayutoollah during the transaction but heard his voice; and in having on the same date again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the said sessions judge of Backergunge, that he saw the said Heedayutoollah during the transaction and identified him as belonging to the party of the 2 annas shareholder,—such statements being contradictory of each other on points material to the issue of the case. No. 24, perjury in having on the 29th March 1852 intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the magistrate of Backergunge. First, that he did not see any one induce the prisoners Heedayetoollah Uzzim Idrak and Jhoroo Chokedar to confess by either threats or promises. Second, that the said prisoners confessed in his presence before the darogah and that he attested their confessions; and in having on the 23rd July 1852, again intentionally and deliberately deposed under a solemn declaration taken instead of an oath before the sessions judge of Backergunge. First that he saw Kasheenath Bose, a dependant of the darogah persuading the said prisoners to confess. Second that he was never asked a word before the magistrate about the above circumstance, nor did he himself say any thing regarding it,---such statements being contradictory of each other on points material to the issue of the case.

CRIME ESTABLISHED.---Perjury.

Committing Officer---Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, officiating sessions judge of Backergunge, on the 3rd February 1853.

Remarks by the officiating sessions judge.---This case was committed under the orders of Mr. Annand, officiating sessions

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judge on trial. He convicted the prisoners and sentenced them to three years each.

In appeal to the Nizamut, the court, present Mr. Mytton, annulled the conviction and desired the judge to retry the case and to desire the magistrate to produce witnesses (himself among the number if necessary,) who can testify to the following points. First.---Whether the examinations on the 26th and 29th March were conducted in the presence of the magistrate. Second.---Whether the witnesses were allowed to read them over or whether they were read to them before they signed them according to Clause 3, Section VII. Regulation IV. of 1797. *Third*,---Whether the witnesses were asked on the 6th April, whether the depositions read to them were correct, or did they only tacitly acknowledge the correctness of what they heard. *Fourth*,---After taking evidence on the above points, the prisoner should be allowed to make a fresh defence, after which the officiating sessions judge will take a fresh verdict and pass fresh orders.

These directions have accordingly been observed and witnesses have been examined on the points indicated by the Superior Court. From their depositions there can exist no doubt, that the depositions of the several prisoners were committed to writing as they were given. The writers have stated so on their oath and from the prisoners' not making any objection, when their several depositions were again read aloud to the present magistrate in their hearing, no doubt can exist that what they had previously stated was faithfully recorded.

The jury returned a verdict of guilty against the prisoners, and I convicted them accordingly. In having done so, I would, however, beg to remark, that in my opinion the 1st count against the prisoner, No. 23, SheebChunder, does not amount to perjury, though the 2nd count does, and on that I have grounded my conviction.

Sentence passed by the lower court.---Each to be imprisoned for three years with labor in irons.

Remarks by the Nizamut Adawlut.---(Present : Sir R. Barlow Baronet,)---The prisoner Rajkishore Dutt's deposition was not attested in due form by the magistrate, Mr. Halkett, on the 29th March, and when the prisoner was brought before Mr. Beaufort, on the 6th April, that officer certified the deposition to have been taken before Mr. Halkett as above, adding, this day the said deposition has been verified before me. A particular form for verification of deposition is laid down in para. 6, C. O. 220, 27th January 1837 ; this has not been observed in this instance, and the omission is of the greatest importance inasmuch the charge of perjury is based upon the evidence given on the 29th March. It was as follows :---that witness attested the mofussil confessions

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of Heedayutoollah and others, in the case of the murder of Nusseeroodeen. Witness did not remember the particulars. *Witness did not see the parties who confessed, threatened or persuaded*, and he *cannot say whether they confessed voluntarily or not*. Witness then acknowledged his signature.

On the 23rd July 1852, the witness was examined before the sessions judge. He then said Heedayutoollah and others confessed before the darogah in the mofussil. Witness was present and attested the confessions. They were read out before witness and the prisoners, and I signed them.

Previous to the confession being made, I saw Kasseenath Bose, bukshee, persuading the prisoners. All that the prisoners said was not written down, and when I mentioned this to the darogah he then says Kasseenath Bose said "make no objection, what has been written is sufficient, sign it." "I did so." The prisoners also signed without demur. The dorogah was about to insult witness, placed him under guard, and he was helpless, and therefore signed the confession.

These two depositions form the ground work of the charge of perjury, upon which the prisoner was ordered to be committed by the sessions judge, Mr. Annand.

No doubt there is considerable repugnancy in the two statements, and had the proceedings before the magistrate and the sessions judge been regularly and judiciously conducted, the result of this trial might have been different.

The deposition of the 29th March, has not been authenticated in due form by the magistrate as required by Clause II. Section 7, Regulation IV. 1797.

Shushee Bhoosun Bose, the writer of the deposition swears, it was read and verified before the magistrate and *the witness did not, therefore, read it to the prisoner (then deponent).*

Now the deposition was written and completed before one magistrate, Mr. Halkett, on the 29th March, whose initials only are to be found on it, and attested as above shewn before Mr. Beaufort, on the 6th of April. Shushee Bhoosun's deposition is not consequently consistent or satisfactory. The magistrate, Mr. Beaufort, in his deposition taken under the remand by the Sudder Nizamut Adawlut, on the 18th January last, merely states, what is the practice in his Court upon verification of a deposition of a witness.

In criminal trials due observance of forms is most material, clearly the evidence was not read over to the prisoner on the 29th March or 6th of April, and the chief witness, Shushee Bhoosum, against the prisoner, does not give such evidence as would justify a conviction. I therefore acquit the prisoner.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus.

SAEFOO NUSHO (No. 3,) AND PUTTOO, ALIAS JHAFRA (No. 4).

DINAGEPORE.

1853.

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Case of SAEFOO NUSHO and another.

The prisoners were convicted of attempting to eal cattle and lpable homide, and nced to be im soned for 14 with lab rons.

CRIME CHARGED.—Nos. 3 and 4, 1st count, cattle stealing attended with murder, and 2nd count, accomplices in the above crime.

Committing Officer---Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 28th March 1853.

Remarks by the sessions judge.—The prisoners were charged with cattle theft, attended with murder on the night of the 5th February 1853, or 24th *Magh* 1259 B. S. The deceased, his mother, and his wife were in their house. Towards morning, during a fall of rain, the deceased and his mother were alarmed by the barking of dogs; went to the door and were followed immediately by the wife. They observed four men towards whom the deceased rushed and was knocked down by one of them, while another struck the old woman a severe blow on the head. The wife escaped and alarmed the neighbours; but before they came to the rescue, the thieves had carried off eleven head of cattle from the cow-house. The deceased told the neighbours that the prisoners struck him, and that he did not know the names of the other men who were with them. The old woman said, the prisoner Puttoo (No 4), struck her son, and the prisoner Saefoo (No 3), struck her. The wife also said, that Puttoo (No 4), struck the deceased, and that she recognized Saefoo (No 3); but that she ran away and did not see him strike her mother-in-law, both the women say, that it was lightening at the time when they distinctly saw the prisoners (near neighbours,) and also knew them by their voices. The old woman also said, that the thieves demanded money from herself and her son. The stolen cattle found their way back next day, and the darogah on his arrival found the son dead, and on the following morning apprehended the prisoners. Saefoo (No 3), before the darogah confessed to the theft with Puttoo (No 4), and two others as accomplices, and said that they all struck the deceased. Before the magistrate he denied having struck the deceased and said, that he and his accomplices carried off some cattle to a short distance when a storm coming on, they let them go and went home. Puttoo (No 4), before the darogah confessed to having been in consultation

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some days before with Saefoo (No 3), and the accomplices named by him about stealing the cattle of the deceased, and to having been told subsequently by Saefoo (No 3), that he and his accomplices had stolen the cattle and murdered the deceased. Before the magistrate he denied his mofussil confession and said, that Saefoo (No 3), owed him grain, and had therefore named him as an accomplice. Both the prisoners pleaded not guilty before me, Saefoo (No 3), endeavouring to account for the accomplices named by him, by the neighbours having told the darogah that they had been seen in his house, and the darogah thereupon entering their names in his mofussil confession, in respect to which he urged beating and want of memory; denying his fouzdarry confession altogether.

The civil assistant surgeon states, "that the deceased had evidently been in a bad state of health for some time. He was suffering at the time of his death from enlarged spleen and dropsy. His death would have been hastened by a blow, such as I observed on his temple: but the blow was not of a nature to have caused death in a healthy subject. The blow might have been caused by a *lattee*, but was very slight; the bone was not fractured, nor was even the skin broken, but slightly bruised."

The *futwa* of the law officer convicts the prisoners, and I concur. Though the civil surgeon states that the deceased had been in a bad state of health for some time, and that the blow was slight and not of a nature to have caused death in a healthy subject, yet he allows that death would have been hastened by a blow such as he observed on the temple; and there can be no doubt from the general evidence that it was the immediate cause of death.

The prisoner's object was, no doubt, to prevent alarm or interference, as a slight blow was found sufficient for the deceased, while his mother received a very severe one; but it is very clear, that they were determined to have the cattle, even if the theft should be attended with murder and that the homicide did happen in prosecution of a felonious intent. I consider the prisoners equally guilty. Saefoo (No 3), struck a severe blow which did not prove fatal, Puttoo (No 4), struck a slight blow which did prove fatal; but they acted in concert and for the same object. I therefore recommend that they be both sentenced to imprisonment for life in the Dinagepore jail instead of a transportation, as their remaining here will probably have a good effect, as a warning to the numerous cattle-stealers in the district.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. Dunbar.)---The cattle-stealing charged, I do not find to be proved; some cows or bullocks were brought out of the cow-house, but

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the thieves got alarmed and almost immediately abandoned them and they were found all right next morning. The assault is proved by the direct evidence supported by the confessions; but I think the conviction can only be of culpable homicide. There was no premeditated design to use violence, the blow or blows given were in themselves slight and would probably not have been inflicted at all, had not the deceased run towards the thieves, probably with the intention of laying hold of one of them; or, as the prosecutrix (who was present) says of assaulting them.

I convict the prisoners of attempting to steal cattle and culpable homicide, and sentence them to imprisonment for fourteen (14) years with labor in irons.

PRESENT:

W. B. JACKSON, ESQ., *Judge*.

GOVERNMENT AND HAJEE PARAMANICK

versus

TAJOO PARAMANICK (No. 1), NOAEE SIRDAR (No. 2), AMEER KHAN (No. 3), TEPOO SHEIK (No. 4, APPELLANT), KISHTO MOHUN DUTT (No. 5), HAJEE SIRDAR (No. 6), AND GOOROO GOBIND SINGH (No. 7, APPELLANT.)

RAJSHAHYE.

1853.

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Case of TEPOO SHEIK (appellant) and others.

Conviction of two prisoners on the charge of maltreatment of a person, who died from the effects, confirmed in appeal.

CRIME CHARGED.—1st count, culpable homicide of Gazee Paramanick, brother of the prosecutor; and 2nd count, maltreatment of Gazee Paramanick, from the effects of which he died, on the 10th June 1852.

CRIME ESTABLISHED.---Nos. 1, 2, 3, 5 and 6, accessary before the fact to the culpable homicide of Gazee Paramanick, and Nos. 4 and 7, maltreating Gazee Paramanick, who died from the effects.

Committing Officer---Mr. F. Beaufort, officiating joint magistrate of Pubna, Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 28th December 1852.

Remarks by the sessions judge.---The deceased was a ryot of the prisoner No. 7, who again was the farmer of *turruf* Kidderpore, refusing to pay *khurcha*, or a *per centage* on his fixed rent, he was by orders of No. 5, first seized and carried to the *cutcherry* at Kidderpore. From thence he was forwarded on to Edulpore, where the farmer, prisoner No. 7, resided with his father. On his refusal to pay the *khurcha*, No. 7 kicked the deceased, and made him over to No. 4, and a person by name Jumal (who died in *hajut*) with directions to get the *khurcha*, "as they best could" when they took him

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away. Next day he was brought out in a very weak state, with his head hanging on one side, and though there is no direct evidence to the fact, it may be presumed he was carried to his village, and was thrown down near his own door, when his brother and son came and carried him home. This was in the evening, and the next night, or early on the morning of the 10th of June, he died.

Thus there were three different overt acts of false imprisonment, or maltreatment.

First.---The taking the deceased to Kidderpore in which Nos. 1, 2, 5, and 6, were engaged.

Second.---The sending him on in the custody of No. 1, Jumal deceased, and two other persons, named, but not apprehended, to Edulpore; and lastly to his confinement at Edulpore by orders of No. 7. No. 4, and Jumal aforesaid, being two of his custodians, and it must have been during the period that he received the bruises exhibited on his person, and for which No. 7, together with Nos. 4 and 3, (who was last seen with the deceased) must be mainly held answerable. All that was ascertained from a *post mortem* examination by the sub-assistant surgeon, was "that the deceased who was of an appoplectic build, died from compression of the brain caused by two clots of blood at the base." There was no fracture of the skull, but "the right arm was severely bruised, and there was a dark band across the loins, and a large quantity of fluid blood also issued from the mouth and nose." The deceased never spoke after he was taken back to his own house. It may, therefore, safely be assumed, that the treatment he received was the remote cause of his death. No. 1, confessed both before the police and the joint magistrate, that he accompanied the deceased to Edulpore, and returned with him to Kidderpore, but that he did not touch him. The foujdarry confession (when read over to him) the prisoner admitted having made. In their defence, Nos 1, 2, 3, and 6, denied beating the deceased, who they said had died of cholera; Nos. 4, 5, and 7, set up *alibis;* but these, both law officer and myself reject. No. 7, pleaded that on the 28th Jeyt, (9th June,) he gave evidence before the moonsiff of Natore, and the moonsiff and one of the vakeels of his court were examined to this *alibi.* The moonsiff could not speak to the identity of the prisoner. The vakeel did, and that he had been examined on the 28th of Jeyt, but his evidence was wholly unsupported. The weight of evidence is for the prosecution; and if the prisoner was not at Edulpore, why was the deceased sent there by No. 5? I have, therefore, in concurence with the *futwa,* convicted Nos. 4 and 7 of maltreating the deceased, who died from the effects of such maltreatment, and the other five prisoners of being accessaries before the fact of the culpable homicide, *viz.,* No. 1 to

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taking him to Edulpore (according to his own confession.) Nos. 2 and 6 to taking him to Kidderpore only. No. 3 to having been last seen with the deceased, and bringing and throwing him down near his own door (No. 6 is only named by one witness, so I have not convicted him of this after act), and No. 5, in having first seized and carried the deceased to Kidderpore, and it is with reference to their respective shares in the transaction, that I have passed different and mitigated sentences on the prisoners, Nos. 1, 2, 3, 5 and 6. Jumal, who died in hospital, was no doubt the principal offender and strange to say, No. 2, after the sentence, refused to eat and died on the 6th day, when under trial, he was in the greatest alarm, and much emaciated, probably from long confinement and suspense.

Sentence passed by the lower court ---No. 1, two (2) years' imprisonment without irons and to pay a fine of 100 rupees or labor. Nos. 2 and 6, each six (6) months' imprisonment without irons and a fine of twenty-five rupees or labor. Nos. 3 and 4, each, three (3) years' imprisonment without irons, and a fine of 100 rupees or labor. No. 5, one (1) year's imprisonment without irons and to pay a fine of fifty rupees or labor and No. 7, five (5) years' imprisonment without labor or irons.

Remarks by the Nizamut Adawlut.---(Present: Mr. W. B. Jackson.)---I see no reason to interfere with the sentence passed on the prisoners, Tepoo and Gooroo Gobind.

PRESENT:

J DUNBAR, Esq., *Judge.*

GOVERNMENT AND BUKERNATH LOHAR

versus

RAMANUND MOOKERJEE (No. 9,) BHOBODEB MOOKERJEE (No. 10,) AND MOHADEB MOOKERJEE (No. 11.)

BEERBHOOM.

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Case of RAMANUND MOOKERJEE and others.

Conviction of a prisoner of affray attended with culpable homicide altered to a conviction of riot attended with culpable homicide, and sentence passed by the sessions judge confirmed.

CRIME CHARGED.---1st Count, Nos. 9 and 10, wilful murder of Bharut Lohar Chowkeedar father of Bukernath Lohar Plaintiff.

2nd Count, Nos. 9, 10 and 11, being accomplices in the above-mentioned crime.

3rd Count, Nos. 9, 10 and 11, affray attended with murder of Bharut Lohar aforesaid and wounding of Harodhan Baoree and Mooleeram Lohar.

CRIME ESTABLISHED.---Prisoner No. 10. Affray attended with culpable homicide and the prisoners Nos. 9 and 11 of being accomplices in the same.

Committing Officer.---Mr. W. Ainslie, Officiating Magistrate of Beerbhoom.

Tried before Mr. B. Garrett, sessions judge of Beerbhoom on the 15th January 1853.

Remarks by the sessions judge.---The particulars of this case are as follows.

Early on the morning of the 19th Kartick last or 3rd November, Mooleeram, a watcher to look after the rice fields in the Keshea *Maidan*, observed the three prisoners with about 40 people cutting the crops on the land of Mohesh Manjee, he immediately went and told Mohesh Manjee what was going on, and hurried off with him and his brother Maran Manjee to complain to the Ijaradar, Futtoo Thandar, who happened to be out at that time, but they found his son Nundo Thandar, setting at his door with witnesses Nos. 1 and 4 and the deceased; on receiving the intelligence they all proceeded together back to the *Maidan* and there saw the prisoners and the reapers at work; they remonstrated at this illegal encroachment on their lands, when they were attacked in a most outrageous manner by the three prisoners. It is in evidence that prisoner No 11 first struck Harodhan Chowkeedar witness No 4 on the head with a sword; that at the same time prisoner No 10 attacked and struck Mooleeram, Nundo Thandar and the deceased with a *lattee*, the latter fell to the ground, when he was kicked and punched by prisoner No 9. All the witnesses that were assaulted appeared to have been more or less stunned at the time, and as they recovered their senses, they hurried away home, leaving

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the deceased lying insensible on the ground, where he was shortly afterwards found by his son the prosecutor who carried him home and caused a report to be sent to the thannah.

The darogah arrived the following day and immediately sent the deceased, who was still insensible, into the sudder station, where he died in the jail hospital on the 8th November from the effects of a fracture of the skull and suffusion of blood on the brain.

The assault on the deceased by the prisoner No. 10 is established by three eye witnesses, and their statements are sufficiently corroborated by the evidence of three other witnesses, who were themselves more or less wounded by the three prisoners at the same time.

The prisoners have pleaded not guilty from the first. Prisoner No. 9 is the uncle, and the prisoners No. 10 and 11 are brothers and nephews of prisoner No 9.

They all plead *alibis*, prisoner No. 9 states that on the 19th Kartick he was at the village of Burcutta, three koss from his residence at Surbedya, where he arrived on the 18th Kartick on his way back from Hooghly, and was detained there the whole of the 19th and till the evening of the 20th by swollen feet. Prisoner No. 10 states that on the 19th Kartick he was at Thannah Moulessur where he had gone to see his father Ramtaran Mookerjea who is the Mohurrir there. Prisoner No. 11 states that he was at the house of his father-in-law, Jugal Serkail, in the village of Kurooka on the day in question. They all unite in attributing their implication in this case to the severity of Bipperchurn Chukerbutty, a rich and influential zemnidar in the district, and called witnesses to prove that the witnesses and deceased were wounded on the night of the 17th *Kartick* in an attempt to steal *dhan* from the village.

The evidence in support of the *alibis* is altogether untrustworthy, it consists of people swearing to dates, some of whom do not know what a date means and are ignorant of the calculation of time by such means, they yet possess a marvellously retentive memory in regard to this particular date.

The evidence of the witnesses brought to prove the fact of the witnesses on the part of prosecution and the deceased having been wounded in the attempt to steal, refers only to the case of Harodhan Baoree. It is of the most worthless description and is more prejudicial than favorable to the prisoners' case. They called altogether 33 witnesses for the defence, of whom 11, including some of the principal native officers in the judge's principal sudder ameen's and magistrate's Courts, and several vakeels were intended to prove the hostility of Bipperchurn Chuckerbutty towards the prisoners' family. I do not entertain the least doubt, indeed I am quite

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aware that the enmity spoken of exists between the parties, but it does not raise the slightest doubt in my mind in regard to the occurrence as established by the evidence for the prosecution, it rather seems to furnish a motive for the acts of the prisoner, as were there no disputes, it is not proveable that they would have encroached on the lands of other parties.

The law officer finds the prisoner No. 10 Bhobodeb Mookerjee guilty of affray attended with culpable homicide, and the prisoners Nos. 9 and 11, Ramanund Mookerjee and Mohadeb Mookerjee as being accomplices in the same, and in concurrence therewith, I sentence Bhobodeb Mookerjee prisoner No. 10 to seven years' imprisonment, and Ramanund Mookerjee prisoner No. 9 and Mohadeb Mookerjee prisoner No. 11 each to five years' imprisonment with labour in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—It was urged by the pleaders on behalf of the prisoners, that the witnesses for the prosecution are men of low degree; that the charge against the prisoners owes its origin to a powerful zemindar, Bipperchurn Chuckerbutty; that there are discrepancies in the evidence and that the *alibis* pleaded by the prisoners have been made good. On the *first* point I observe, that the mere rank in life of the witnesses in a case is no true criterion of the trustworthiness of their evidence. *Secondly*,---I find no reason whatever to suppose that the prisoners have been accused at the secret instigation of Baboo Bipperchurn Chukerbutty: indeed, it would appear from a report of the darogah dated the 20th November 1852, that Ramtarun, the father of one of the prisoners, was actively engaged in an attempt to spoil the case by getting that zemindar to send for the witnesses, and use his influence with them on behalf of the prisoners. *Thirdly*,---the discrepancies in the evidence are altogether unworthy of notice, being, in fact, nothing more than such variations, as must, and do occur in the repeated statements of every honest witness when deposing to a series of facts from recollection. And *fourthly*,---I can place no value on the evidence for the defence, directly opposed as it is to the facts so clearly and fully established by that for the prosecution. It is to be noted, that the depositions of the wounded men were taken by the darogah on oath, as soon as possible after the occurrence. Their depositions are confirmed in all essential points, by those of the witnesses who were not wounded, and by the evidence of Poorarum Chowkeedar, who arrived on the spot in time to hear Bharut Chowkeedar speak.

Poorarum asked him who had wounded him so grieviously, and he at once named Ramanund and Bhobodeb. In fact, the evidence is of so clear and convincing a nature, that not a

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doubt is left as to the circumstauces having occurred just as stated, and as affirmed by the darogah in his report of the 9th November, wherein he states that the inhabitants of the adjacent villages all agreed in saying, that to the best of their belief, the assault and wounding were owing to no other cause than that set forth in the complaint of Bukernath, the son of the deceased.

It was finally urged for the prisoners, that they are brahmins by caste, and men of respectability, upon whom the sentence of the sessions judge must press with great severity. On this point I have only to say, that the law is no respecter of persons, and views the guilt of high and low in the same light. The sentence of the sessions judge is accordingly confirmed. The wording of the conviction, however, is wrong, and must be altered. It should be "riot attended with culpable homicide," the term "affray" being applicable only to cases in which two parties have been engaged in a breach of the peace, and not to cases like this, in which the violence was al one side.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND ISHURREE KHANKEE

versus

CHEMUN SINGH, (No. 1), BHEEM SINGH, (No. 2), BAHADOOR SINGH, (No. 3, APPELLANT) SOBAH PUTTACK (No. 4), DAHOO (No. 5), AND OODITNARAIN MISSR (No. 6, APPELLANT).

24-PERGUNNAHS. 1853. April 30. Case of BAHADOOR SING and others. Prisoners convicted of Dacoity, and setenced to 14 years' imprisonment. Sentence of the sessions judge upheld in appeal.

CRIME CHARGED.---1st count, prisoners Nos. 1 to 6, dacoity and plunder of property, value Company's rupees 375; 2d count, prisoners Nos. 1 and 3, having in their possession part of the above plundered property, knowing it to have been acquired by dacoity.

CRIME ESTABLISHED.---Dacoity.

Committing Officer---Mr. E. Jenkins, magistrate of Howrah.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 25th January 1853.

Remarks by the additional sessions judge.---On the evening of the 25th of November last, the house of the prosecutrix, Ishurree Khankee, was attacked and plundered of property valued at more than Company's rupees 300, by a body of upcountry men. She lives about three beegahs from a *pharee* and at the sudder station, but the dacoits went off without opposition and none of these prisoners were said to have been recognised among them by any witness. A post man was

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passing by the *pharee* Debeepoor, which is three coss from the scene of crime, and he told the police at the *pharee* that the dacoity had taken place and that he had seen a party of suspicious looking men as he had come there. The *pharee* police in consequence of this information apprehended the prisoners Nos. 1 and 2, at a village called Kuba, about two coss from the house of the prosecutrix. They were armed with a sword and a pistol, and a silver chain and a key and a gold chain were found on them, which proved to be a part of the property which had been plundered. They made confessions of their guilt, but named only one prisoner, *viz.* Bahadoor Sing, as having been engaged in committing the crime with them, but there is a proceeding of the magistrate filed with the record, dated 7th December, in which he directed other persons to be apprehended and there is a purwannah of the same day, filed with the record, by which ten men including the prisoners, Nos. 4, 5 and 6, and the pardoned witness No. 1, Luchmun Detchet were to be apprehended. There is nothing in the record to show how their names were obtained, but the mohurrir who is attached to the magistrate's office, and who attended at my court, said, that he believed that the names were obtained by a *vivâ voce* statement made before the magistrate by one of the first two prisoners who had been apprehended. On the 26th of November a warrant was issued for the apprehension of Bahadoor, prisoner No. 3, but he could not be found, he was, however, apprehended on the 27th December, with the prisoners Nos. 4, 5 and 6, and the pardoned witness Lutchmun Detchet at Lalghola in the district of Moorshedabad, where they had been traced from different places in the Kishenugur district. Bahadoor Singh was a servant of Toylockho Mohun Tagore, and had obtained leave of absence from his master for five days, during which this dacoity was committed. When the warrant was issued for his apprehension, he appears to have heard of it for he left his master's service very suddenly, and went off with some of the other dacoits, taking with him a silver embossed badge, which was recovered when he was apprehended. Three brass vessels were pointed out by the prisoner No. 6, and the pardoned witness No. 1; they had been thrown into a tank after the dacoity. A silver waist chain worth about 20 rupees, was sold in Calcutta by Bahadoor Sing and two other men and it was recovered. All these circumstances, as well as the confessions of five of the prisoners corroborate the evidence of Luchmun Detchet, who was one of the dacoits and was apprehended at Lalghola, and confessed before the magistrate on the 5th of January, and having been admitted to be a witness in the case made a deposition on oath on the 14th of January. The prisoners Nos. 1 and 2, confessed to having

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been at the dacoity, but denied having taken any part in it, they, however, were apprehended with a part of the spoil on their persons which also they did not deny was obtained by the dacoity. The prisoners Nos. 3, 4 and 6, confessed to having been at the dacoity, but each endeavoured to extenuate his own guilt and throw it on others. The prisoner Dahoo No. 5, did not confess, but the evidence of the dacoit witness Lutchmun, has a truthful character except that he does not perhaps declare the whole of his own guilt, he said that Dahoo was one of the dacoits, the latter was apprehended with one of the other dacoits in the Moorshedabad district, but his occupation was in the Howrah district, and each of the other dacoits, Nos. 3, 4 and 6, mentioned him in their confession and I have no doubt of his guilt. The property which was carried off in this dacoity, was not much above rupees 300, but it was in other respects a very serious dacoity. The dacoits were up-country men armed with swords and a pistol, the crime was committed with much daring about 8 P. M., close to a police station and not far from the magistrate's house. The prisoners had gone forth in the same gang for some days and four of them had kept together after the crime was committed.

Sentence passed by the lower court.---To be imprisoned with labor and irons for fourteen (14) years each.

Remarks by the Nizamut Adawlut.---[Present: Mr. J. Dunbar.)---The court see no reason to interfere with the sentence passed by the sessions judge.

SUMMARY CASES.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

CHUNDER MOHUN ROY, PETITIONER.

NUDDEA.

1853.

April 16.

Case of CHUNDER MOHUN ROY.

Petitioner released on the ground of the insufficiency and invalidity of the magistrate's warrant, issued to him as zemindar under Section IX. Regulation III. of 1812, for the apprehension of an accused party, by reason of the warrant not containing a specification of the crime with which such party was charged. Warrants under that regulation, as to parties not yet convicted can be issued only upon charges of *heinous crimes.*

Mr. Waller and Baboo Kishen Kishore Ghose appeared in support of the petitioner's appeal, from the order of the sessions judge of Nuddea, confirming the order of the magistrate of that district, dated the 21st March, sentencing the petitioner to imprisonment for two months, and to a fine of rupees 200, commutable to a further period of imprisonment for one month, on a charge of neglect of his duty, as a landholder, to execute a warrant transmitted to him under Section IX. Regulation III. of 1812, for the apprehension of certain offenders.

The Court recorded an order to the following effect :—

The main ground of appeal is, that the warrant of the magistrate was not legally correct under the Regulation cited. In the original warrant now before the Court, it appears, that the specific crime with which the absconded persons were charged is not mentioned, and consequently no order for their apprehension could be legally carried into effect under Regulation III. of 1812. The warrant is indeed as to the crime in reference to which it was issued, a mere literal transcript of *the blank form attached to the Regulation.* In such a case, owing to this defect of the warrant, the zemindar could not be held free from responsibility for the consequences of any resistance to its execution, notwithstanding the provisions of Section X. of that Regulation, which are intended for his protection in acting on a legal warrant.

The principal parties, who were convicted by the magistrate on the charge of assault and plunder on account of which this warrant was issued, were punished by the magistrate within the limit of his general powers under Section XIX. Regulation IX. of 1807. It is very doubtful, whether a warrant however specific, could have been held to be valid upon a charge of such a character, since it is only in *crimes of a heinous nature* that a magistrate is competent to address a warrant to landholders for the apprehension of offenders according to the terms of Section IX. Regulation III. of 1812. The orders of the lower court are accordingly reversed.

PRESENT:

J. R. COLVIN, ESQ, *Judge.*

RAMDHUN GHOSE, PETITIONER.

24-PERGHS.

1853.

April 19.

Case of RAMDHUN GHOSE.

The provisions of Act XXI of 1841, are only applicable in cases of unlawful obstruction of roads, when a public right of thoroughfare exists.

Mr. Norris and Baboo Kishen Kishore Ghose appeared for the petitioner, and Baboo Ramapersad Roy watched the case in his capacity of Government pleader.

The petitioner appealed from the order of the sessions judge of the 24-Pergunnahs, upholding the magistrate's order, dated the 29th November, sentencing petitioner to a fine of Co.'s Rs. 50, for not obeying an injunction under Act XXI. of 1841, directing him to open an obstructed road. The court are of opinion that Act XXI. of 1841, is applicable only to cases of unlawful obstruction of public thoroughfares, when the public benefit and comfort are in question, but that in cases where the right of use of any thoroughfare is disputed merely between some private parties, the magistrate should decide the case under Section 6, Act IV. of 1840. In the present case Act XXI. of 1841, is not applicable, as there is no public right of thoroughfare and the order of the lower court must be reversed.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

GOVERNMENT

versus

JHOOMUN CHOWKEEDAR.

PATNA.

1853.

April 29.

Case of JHOOMUN CHOWKEEDAR.

The Nizamut Adawlut cannot take cognizance of the proceedings of a magistrate in regard to the dismissal of a police officer. The control over such proceedings is exclusively with the superintendent of police. It is competent to a magistrate to limit his conviction to what he may consider to be established against a prisoner upon evidence in respect to particular facts, although the charge, referring to the same facts, which was at first preferred against the prisoner and to which he was called on to answer, may have been of a graver nature. It is enough that the prisoner has been called on to *plead substantially to the facts* to which the conviction applies.

This case was referred to the Nizamut Adawlut, under Section 5, Act 31 of 1841, and Circular Order 18th March 1842, by Mr. R. J. Loughnan, sessions judge of Patna on the 12th January 1853, with the following report.

On the 26th June the accused Chowkeedar was suspended by Mr. Jackson the magistrate, on a charge of concealing the real circumstances in a case of riotous assault attended with severe personal injury, in which Luchmun Das and others were afterwards committed to take their trial in the sessions court.

On the 11th August a proceeding was sent to Mr. Tucker then officiating as magistrate, directing him to send up the said Jhoomun Chowkeedar, to give his evidence in the case of assault then under trial. In reply Mr. Tucker referred to the above-mentioned order of Mr. Jackson as an objection to his being examined as a witness.

The repeated orders of the sessions court to Mr. Tucker while officiating as magistrate, issued between the 18th of August and the 27th of October, on which date Mr. Jackson resumed charge of his office, having failed to bring about a decision of the case, the magistrate was addressed on the subject by letter of the 1st of November. In this letter it was explained to Mr. Jackson, that as the Chowkeedar was charged with making a false report to the police, of the circumstances of a riotous assault, attended with severe personal injury, he ought, if proof had been obtained against him, to have been committed to the sessions with the persons accused of perpetrating the assault.

The case was suffered to remain undecided till the 6th December, but as Mr. Tucker had not called on the accused to name his witnesses, and Mr. Jackson has disclaimed in his letter of the 8th December all intentional delay, I will not say any thing further on that subject deeming his explanation satisfactory.

But the point on which I cannot consider it satisfactory is one which touches the legality of the magistrate's proceed-

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ings. The *Chowkeedar* has been punished with dismissal from office for neglect of duty, but it is plain from the proceedings that the act in which the neglect of duty is deemed to consist is the same out of which sprung the charge to which Mr. Tucker called on the accused to plead, which charge was only cognizable under the circumstances in the sessions court. Had there been an order of acquittal with respect to that charge, and Mr. Jackson had then called on the accused to plead to a charge of simple neglect of duty founded on a distinct act, his proceedings might have been regular, but as the case stands, the mere alteration of the charge in the final roobaearee, and the substitution of another charge in it for that embodied in the question calling on the accused to answer, can never make it regular, or give the magistrate jurisdiction to sentence the accused for the act on which the charge was founded.

The question I wish, therefore, to propose for the decision of the court is whether, after Mr. Tucker had put the chowkeedar on his defence upon a charge which certainly amounts to privity to a riotous assault, in which event Mr. Jackson seems in his letter, already quoted, to admit that he ought on proof being obtained to have been committed to the sessions, Mr. Jackson's act in altering the charge at the moment of decision is not illegal and open to censure.

The annexed remarks* contained in a letter from Mr. Jackson to your address were received in this office on the

* From the magistrate of Patna, to the register of the court of Nizamut Adawlut, No. 102, dated 23rd February 1853.

I do myself the honor to submit for the court's consideration the following observations upon the remarks contained in the sessions judges letter to your address No 174.

The special defect of law or of form insisted on by the sessions judge in this case, appears to be that whereas the chowkeedar was arraigned for an act of quasi complicity in a case of riot and assault committed for trial at the sessions, which offence if established was triable, in Mr. Loughman's opinion, only at the sessions, he was eventually punished by dismissal from office for "neglect of duty,"—a sentence within the magistrate's competency, and interference with which on the part of the session's judge is expressly barred by Act XXIV. of 1837.

Admitting for a moment that a substantial violation of law is involved in the fact as stated, it is right to remind the court that the chowkeedar was suspended by my orders before my departure on leave, but the passing of final orders in his case was by me postponed until the decision of the case of Mohunlal, with which his was connected; that subsequently his *answer* was taken by Mr. Tucker, officiating magistrate, and the case proceeded no further; and that finally on my return to the station, I disposed of the case on the urgent requisition of the judge upon the charge on which I had originally suspended him.

But it does not appear to me that in the examination of the defendant by Mr. Tucker, that gentleman intended to establish any act of direct con-

24th ultimo. I cannot say that I consider the explanation satisfactory. The court must judge whether there is any thing in the question put to the accused by Mr. Tucker which can bear a construction like that put upon it by Mr. Jackson. His order directing the chowkeedar to be suspended dated 26th, and recorded on the darogah's report of the 25th June has not been put on the record of this case. I therefore annex a copy of it for convenience of reference.

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Case of JHOOMUN CHOWKEEDAR.

Resolution of the Nizamut Adawlut.—(No. 472, dated 29th April 1853.)—Present: Mr. J. R. Colvin.

The court, having perused the papers above recorded, observe that they cannot take cognizance of the proceedings of the magistrate in regard to the dismissal of a police officer. The control over such proceedings is exclusively with the superintendent of police.

The court, however, would observe generally for the information of the sessions judge, that it is competent to a magistrate to limit his conviction to what he may consider to be established against a prisoner upon evidence in respect to particular facts, although the charge, referring to the same facts, which was at first preferred against the prisoner, and to which he was called on to answer, may have been of a much graver nature. The charge, as in the first instance laid before, or stated by a magistrate, may be inaccurate or mistaken. In his decision it is his duty to confine his judgment and sentence to the offence that he finds to be proved. It is enough that the prisoner has been called on to *plead substantially to the facts* to which the conviction applies.

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plicity in the case pending before the sessions, but simply general neglect of duty in connection with that case, and the purport of the question put to the chowkeedar, perhaps loosely worded, was intended to specify in what the neglect of duty lay.

For my own part, if I had thought that any accessaryship or other share in the original case could be established against the chowkeedar, I should have much preferred making him over to the sessions.

As to the delay which occurred, I need only observe that after my return from leave, I found a considerable arrear of business on hand; in addition to which the native judges were absent, the civil courts being closed; and the joint magistrate at the same time obtained leave of absence, which prevented me from making over much business to him.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT AND SURBCHUNDER MOOKERJEA

v.

RAMDYAL DOME CHOWKEEDAR (No. 21), DIGUMBAREE MYRANEE (No. 22), AND ESSORE MUNDUL (No. 23).

BEERBHOOM.

1853.

May 2.

Case of RAMDYAL DOME and others.

One prisoner convicted as an accessary after the fact on a charge of wilful murder, and another of privity to the same crime.

CRIME CHARGED.—1st count, wilful murder of Bukernath Mookerjea, brother of Surbchunder Mookerjea, prosecutor; 2nd count, being accomplices in the above-mentioned crime, and 3rd count, privity to the above-mentioned crime.

Committing Officer—Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Zillah Beerbhoom, on the 13th April 1853.

Remarks by the sessions judge.—This is a most atrocious murder, and I am sorry to observe, that the parties, who appear to have been the principals in it, have not been brought to justice. The deceased, a young man of twenty-five years of age, left his house on the night of the 22nd Magh or 3rd February last, saying he was going to the house of Kallichurn Mundul; as he did not return on the following day, fears began to be entertained and a search was commenced; Kallichurn Mundul was interrogated, and he said, that the deceased had smoked a *chillum* at his house on the preceding night, and had then gone to the residence of Kalikaunt Mundul, with whose wife, Bama Chassanee, the deceased is stated to have carried on an intrigue. Bama Chassanee on being questioned, stated that the deceased had not visited her, but had gone to the house of the prisoner, No. 22, Digambaree Myranee; this woman, however, denied having seen him at all. The search was continued during the whole of the 23rd and 24th, on the night of which day a body was found floating in the Buklessur Nuddee, about a mile from the village where the deceased resided. Information was immediately forwarded to the thannah, and the darogah arrived at the spot during the night, and early the next morning the body was taken out of the water, and identified as that of the deceased. Two severe wounds were observed on the left side of the head quite sufficient to cause death.

Suspicion having been directed towards the prisoners, they were taken into custody, and all three confessed before the darogah to having been more or less concerned in the murder.

The female prisoner alone repeated her confession before the magistrate, she stated that the deceased came to her house

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one evening in company with Doorga Chassanee (a woman apparently of loose character who has been in the habit of distributing her favors at one time to the deceased, and at another to Chunder Seekur Bhuttacharje and Greeschunder Bhuttacharje, which has caused a feud between them); that they both retired to one of the apartments in her house, and that shortly after she also went to bed; that about midnight Dunonjoy Chowdry (who is a maternal uncle of Chunder Seekur Bhuttacharje) the prisoners, Ramdyal, chowkeedar and Essore Mundul, with two or three others, whom she did not know, came to her house, and whilst the two male prisoners kept her down and covered her face with some cloth, the others murdered the deceased. She heard him once call out "murder," but could see nothing in consequence of the cloth over her eyes, and that after he was dead, the body was removed by the prisoners.

The prisoner, Ramdyal, chowkeedar, in his confession before the darogah stated, that he was on watch within his own beat, when hearing a dog barking, he went to the house of the female prisoner (which was in another division of the village) and there saw the dead body of the deceased, and Dunonjoy Chowdry and Essore Mundul standing near together with Digumbaree Myranee, who told him that the persons just named had murder the deceased; and that he then saw them take up the body and carry it away; that he had also seen the deceased and Doorga Chassanee on the preceding evening sitting in the house of Digumbaree Myranee. On the day following that on which the body was found, and near to the place, he pointed out to the darogah the spot where the cloth of the deceased had been buried in the sand, and there they were discovered much stained with blood.

The prisoner Essore Mundul stated before the darogah, that he was summoned to attend Chunder Seekur Bhuttacharje and ordered by him to kill the deceased in company with several others; that accordingly they way-laid him as he was leaving the house of Kalikaunt Mundul about midnight, and carried him off to the house of the female prisoner where he was murdered.

The confessions of all three prisoners before the darogah are attested by witnesses in the usual manner, and are sworn to having been made voluntarily. The evidence to the fact of Ramdyal, chowkeedar, having pointed out the spot where the cloths stained with blood, which are identified as having belonged to the deceased, had been concealed about forty cubits from where the body had been thrown into the water, is circumstantial and satisfactory. The instrument with which the murder was perpetrated is not forthcoming, though the evidence of the civil assistant surgeon establishes the fact that death was

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caused by injuries on the head inflicted by some heavy weapon, and corresponds with what is narrated in the *sooruthal*.

In this court all three prisoners plead not guilty. The prisoner, Ramdyal, chowkeedar, denies having confessed in the mofussil. The prisoner Digumbaree Myranee states, she was made to confess by Gooroodoss Baboo, zemindar; she does not know what she said in the mofussil and disavows her confession before the magistrate. The prisoner, Essore Mundul, disavows his mofussil confession, which he states, was forced from him by Bishonath Baboo and Gooroodoss Baboo. The witnesses for the defence depose to nothing in favor of the prisoners, excepting witness, No. 20, Nubae Mundul, who states that the prisoner Essore Mundul was in his house on the night of the murder till near midnight.

The five jurors with whose assistance I tried the case, brought in a verdict of guilty of the second charge, *viz.*, of being accomplices in the murder, against all three prisoners.

I cannot concur in this finding. I am of opinion that the mofussil confession of Ramdyal, chowkeedar, confirmed as it is by the well attested fact of his having pointed out the exact spot where the cloths of the deceased were concealed, is sufficient to establish his guilt as an accessary after the fact; and that the tenor of both the confessions of Digumbaree Myranee, corroborated as they are by the marks of blood which were detected in her house, warrant her conviction on the third charge of privity.

With regard to Essore Mundul, there is nothing whatever in evidence against him except his own mofussil confession, which I do not think it would be safe to trust alone; his account, moreover, of the transaction is extremely improbable, and is opposed to the circumstances as detailed by Digumbaree Myranee, who has, I believe, given a true version of the case.

I have therefore acquitted Essore Mundul, and would recommend that a sentence of ten years' imprisonment with labor in irons be passed on the prisoner, Ramdyal, who is a chowkeedar, and a sentence of five (5) years, with labor suited to her sex on the prisoner Digumbaree Myranee.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—I concur with the sessions judge in convicting the prisoner, No. 21, of being accessary after the fact; his mofussil confession and his having at once pointed out and dug up the clothes of the deceased are fully proved.

Prisoner, No. 22, confessed in the mofussil and before the magistrate to having seen others seize and carry off the deceased from her house; in her house and near it blood was discovered and the circumstances of the case shew, that the murder must have been committed there. The jury concurred in the

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Case of
RAMDYAL
DOME and
others.

conviction of these prisoners and the sessions judge upheld their verdict. I confirm the sentence he has pronounced.

Prisoner, No. 23, Essore Mundul was also convicted by the jury, the judge however differed, and acquitted him.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

KURIMBUKSH

versus

MUSSUMMUT SOOTRI.

TIPPERAH.

1853.

May 2.
Case of
MUSSUMMUT
SOOTRI.

In a case of theft, sentence reduced from 7 to 3 years' imprisonment with labor, with reference to the circumstances.

CRIME CHARGED.—1st count, theft of property belonging to the prosecutor, valued at rupees 7, and 2nd count, receiving and retaining in her possession property obtained by the above theft, knowing it to have been such.

CRIME ESTABLISHED.—Theft of property belonging to the prosecutor, Kurimbuksh, valued at rupees 7.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 3rd March 1853.

Remarks by the sessions judge.—The prosecutor's daughter, an infant of eighteen months of age, went with some other children to play near an adjoining deserted hut. The child returned in a short time crying, and the prosecutor on examining her found, that her silver necklace and anklets of the same material were missing. The prosecutor accompanied by the witnesses, Nos. 22 and 23, went in search of the missing articles, and, in the course of doing so, entered the empty hut, where they found the prisoner, who had shrunk against the mat wall, as if to avoid discovery. On searching her, the necklace and anklets were found concealed on her person.

The prisoner pleaded "*not guilty.*"

The evidence in support of the prosecution was afforded by two witnesses, Nos. 22 and 23, who accompanied the prosecutor, when he went in search of the lost ornaments, and by two more, Nos. 24 and 25, who deposed to the property belonging to the prosecutor.

The defence consisted of a denial of having either stolen or of having knowingly retained in her possession the child's ornaments. The prisoner stated, that she was not in the possession of her sound senses at the time, and knew not how she had been taken to the police station. She added, that her character for previous misconduct had led to the present charge being brought against her, but called no witnesses to this defence.

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SOOTRI.

The Mahomedan law officer found the prisoner guilty on the 1st count of the indictment, and declared her liable to *tazeer*.

Of her guilt, there can, in my judgment, also be no doubt, and as I find that she received on one occasion a consolidated sentence of two (2) years' imprisonment for three thefts on one individual, and was on another, sentenced by the sessions court to four (4) years' imprisonment with labor, as an accomplice in another case of theft (during the term of which she committed a petty theft in the jail hospital) I sentenced her, as shewn in column 12

Sentence passed by the lower court.—Imprisonment for seven (7) years, with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—The prosecutor was to blame for allowing so young an infant to stray from proper protection. No harm was done to the child and the ornaments were immediately recovered without the agency of the police. I think under the circumstances a sentence of less severity than that passed by the sessions judge will suffice. I accordingly reduce the sentence to imprisonment for three (3) years with labor.

PRESENT:

J. DUNBAR, ESQ., *Judge*.

GORYE RUKHIT AND GOVERNMENT

versus

CHEENEEBASH DHOBA.

WEST BURDWAN.

1853.

May 2.
Case of
CHEENEEBASH DHOBA.
Conviction and sentence of 14 years on a prisoner charged with dacoity upheld in appeal.

CRIME CHARGED.—1st count, dacoity at the house of Bunomalee Koondoo, a minor, on the night of 20th of January 1853, corresponding with 8th Maug 1259 B. S., and plundering therefrom property valued at rupees 263-14-7½, attended with the assault of Gorye Rukhit, the prosecutor, and 2nd count, knowingly receiving and having in his possession property acquired in the said dacoity.

CRIME ESTABLISHED.---Dacoity at the house of Bunomalee Koondoo, a minor, and plundering therefrom property valued at rupees 263-14-7½.

Committing Officer--Mr. W. J. Longmore, officiating joint magistrate of Bancoorah.

Tried before Mr Pierce Taylor, sessions judge of West Burdwan, on the 16th March 1853.

Remarks by the sessions judge.---The prisoner fell into a deep water-course, when precipitately flying, with other dacoits, from the prosecutor's house from which they had been driven by the villagers, with stones and arrows. He was found in the

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CHEENEE-
BASH DHOBA.

same, next morning, by witness, No. 1, much wounded in various places, by the stones upon which he had fallen and unable to move without assistance. A *lottah* and a *batee* or bell-metal bowl, belonging to the prosecutor's ward, were found with him in the water-course, and also a pair of shoes and a *gillap*, or cotton wrapper, which were, to all appearance, his own property. He seems to have been very angry with his companions for leaving him in the lurch and, therefore, made a full and voluntary confession before the mofussil authorities, as soon as he was questioned. This, with some variations and reservations, of no consequence, was repeated before the officiating joint magistrate. On both occasions he affirmed, that he had remained sitting apart, while his companions committed the deed, and that the property, found with him in the water-course, had been thrown there by one of his accomplices, named Gopal Mal, after his fall.

The prisoner pleaded *not guilty*, before the sessions court and when put upon his defence, pretended that he had been seized, beaten and wounded by the *ghutwals* near the water-course, in which he was found, when on his way to demand 8 annas, owing to him by one Neemye Dhoba; that the *ghutwals* had told the prosecutor that he must be convicted, *somehow*, whereupon that individual had brought the *lottah* and *batee*, and thrown them down near him; that he had made no confession to the darogah; that he had been senseless, "*beyhosh*," when in the officiating joint magistrate's court, and not conscious of what he said and did there, though he was sure he hadn't confessed; that he was a person of good character, and that he had been at home on the night of the alleged dacoity.

The actual occurrence of the dacoity, the prisoner's seizure, as described, with certain property belonging to the prosecutor's ward in his possession; the identity of the said property; the sudder and mofussil confessions, and their voluntary nature were all fully proven, while the evidence of the witnesses, for the defence, was completely futile.

The assault upon the prosecutor was not established.

Under such circumstances, I convicted the prisoner of dacoity, on his own confessions and the evidence of the witnesses for the prosecution, collectively amounting to full legal proof, and sentenced him as noted.

The mofussil confession of the prisoner shewed, that this dacoity was planned in a place close to the officiating joint magistrate's cutcherry, when the prisoner's accomplices were under trial, in another case, and that the latter were some of the persons sentenced by me for dacoity in March 1853, but subsequently acquitted by the Nizamut Adawlut. See

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May 2.
Case of CHEENEE-BASH DHOBA.

Court's* proceeding in the case of Gooraye Mal, &c. dated 12th May 1852.

Sentence passed by the lower court.---Imprisonment for twelve (12) years, with labor in irons in banishment, and two (2) years more in lieu of stripes, also with labor and irons, total fourteen (14) years' imprisonment with labor in irons in banishment.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. Dunbar.)---The conviction is good. The appeal is rejected.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOPAL SEIT TELLE AND GOVERNMENT
versus
REEDYE KAMAR.

WEST BURDWAN.

1853

May 3.
Case of REEDYE KAMAR.

Prisoner convicted of entering the prosecutor's house with a sword for an unlawful purpose, and on being seized, inflicting several wounds on the prosecutor in order to effect his escape, but sentence reduced, to three years' imprisonment.

CRIME CHARGED.---Entering the house of the prosecutor, Gopal Seit Telle, on the night of the 7th January 1853, corresponding with 25th of Poos 1259 B. S., with intent to steal, and, being seized by the prosecutor, with then and there repeatedly wounding him with a *tulwar* with intent to murder the said prosecutor.

CRIME ESTABLISHED.---Entering the house of the prosecutor with a lethal weapon in his hand, on the night of the 7th January 1853, corresponding with the 25th Poos 1259 B. S., for an unlawful purpose, and when seized by the prosecutor, having then and there inflicted repeated slight wounds upon the said prosecutor's person, with a view to effecting his escape from his hands.

Committing Officer---Mr. W. J. Longmore, officiating joint magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 11th March 1853.

Remarks by the sessions judge.---The prosecutor's account of this case was, that his wife and he slept without light on the same couch; that he was awakened at about ½ past 12 o'clock, by a metallic clatter of some kind, and saw six persons in his apartment; that he forthwith seized one of them, who had a sword in his hand (*videlicet* the prisoner) when the other five, whom he recognized as that individuals nearest relations, made their escape; that the prisoner whom he held down by the forelock, struck him repeatedly with the sword and inflicted some of the blows, after his cries had brought his brother, Gungadhur, witness No. 3, his father, Punchye, witness No. 14, the chowkeedar and the ghutwal, witnesses

* Page 798 of the Report.

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Case of
REEDYE KAMAR.

Nos. 1 and 2, and others to the spot, and that the prisoner and his companion must have intended to rob him, because a *lottah*, two *thallas* and two clothes which had been in the sleeping apartment when they entered it, were found behind the house, when the *sooruthal* was taken.

The prisoners account of the matter in the mofussil, before the officiating joint magistrate, and when placed upon his defence by me, was, that the prosecutor's wife had invited him to visit her on the night mentioned; that he had taken the sword with him for his defence, in the event of his being stopped or seized; that, while he was pursuing his intentions, either the husband was awakened by some movement of his wife, or awoke of his own accord and seized him; that the prosecutor's cries brought his brother, Gungadhur, and others into the room, when the said Gungadhur took up the sword, which was lying by the bed, and somehow, in the dark, wounded both him and the prosecutor. He added that he had had criminal conversation with the prosecutor's wife, Dassee Telin, for about three years, and named witnesses to prove the fact, and, also, that the prosecutor's brother had taken up the sword.

The prevarication and discrepant allegations of the prosecutor, his father, brother and other witnesses, in regard to the presence and flight of the prisoner's five relations, and the subsequent discovery of the *thallas*, &c., behind the house, were most gross, and their statements, therefore, were so far utterly unworthy of credit, but the prisoners seizure inside the house with the sword in his hand and the wounding were distinctly proven. Such being the case, there was strong reason to believe, that the statement made by the prisoner, with the exception of that portion of it which had reference to the wounds inflicted upon the prosecutor, was the correct one, and it was supported by the depositions of the witnesses for the defence, though not in the most satisfactory manner.

The evidence of the civil assistant surgeon, the prosecutor, and some of the witnesses for the prosecution sufficiently shewed, that the numerous slight wounds inflicted upon the prosecutor by the prisoner must have been made by gentle strokes, given by the latter, with the intention of effecting his escape only, and by no means with any murderous intent.

The *futwa* of the law officer convicted the prisoner on his own confession and the evidence adduced, of entering the house of the prosecutor with a sword in his hand for an unlawful purpose, and, when seized by the latter of having repeatedly inflicted slight wounds upon his person, with a

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Case of
REEDYE KA-
MAR.

view to effecting his escape, and declared him liable to *tazeer*, or discretionary punishment at the will of the judge.

As I entirely agreed in this finding, I convicted the prisoner in accordance with it on full legal proof, and sentenced him to seven (7) years' inprisonment, with labor and irons in the zillah jail.

I was unable to find any precedent in point, but the circumstances of the case appeared equally to preclude a less, or a greater amount of punishment.

I, at the same time ordered, that the improper behaviour of the jemadar of the Rajgaon phauree, in making his inquest before the connections and relations of the prosecutor only, and thereafter supporting the false account of the case given by that individual, in his report, should be brought to the notice of the officiating joint magistrate.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)---The Prisoner has appealed. The papers had been already called for, as the sentence appeared to be too severe. The facts on the record fully support the view of the case taken by the sessions judge and the law officer. The Prisoner had effected an entrance into the house of the prosecutor at night, for the purpose of an intrigue, having with him a sword for his protection. When seized, he used the sword and inflicted a number of wounds, none of them severe, on the prosecutor with a view to effect his escape. He was, notwithstanding, apprehended and secured. I think that a sentence of imprisonment for three (3) years, with a fine of fifty (50) rupees commutable to labour, if not paid withing fifteen days from the date of communication of this order, will be adequate to the offence, and I reduce the sentence on the prisoner accordingly.

PRESENT:

J. DUNBAR, Esq., *Judge.*

JADOO BHOOEEAH AND GOVERNMENT

versus

KARTICK CHUNG (No. 1), KOOSAIE CHUNG (No. 2), MOHESH CHUNG (No. 3), RAKHALL BAGDEE (No. 4), KALA CHUNG (No. 5), AND JUGOO CHUNG (No. 6).

HOOGHLY.

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May 5.

Case of KARTICK CHUNG and others.

The prisoners were convicted of dacoity. The sentence of the sessions judge confirmed.

CRIME CHARGED.---Dacoity attended with wounding in the house of the prosecutor, Jadoo Bhooeeah, on the night of the 6th November 1852, corresponding with 22nd Kartick 1259 B. S., and plundering therefrom property to the amount of rupees 13-6-6.

CRIME ESTABLISHED.—Dacoity attended with wounding.

Committing Officer—Mr. C. T. Buckland, magistrate of Hooghly.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 26th January 1853.

Remarks by the officiating sessions judge.—The prisoners, Kartick Chung, No. 1, Kosaie Chung, No. 2, Rakhal Bagdee No. 4, and Jugoo Chung, No. 6, are charged with having committed a dacoity in the house of the prosecutor, Jadoo Bhooeeah, in Chaparroo, thannah Beneepore, on the night of the 6th November last. The commitment was made on the 20th December, and since then two of the prisoners tried by the magistrate and committed, died in prison, No. 5, Kala Chung, on the 24th December, and No. 3, Mohes Chung, on the 22nd January. Prisoners plead *not guilty.* Before the police and the magistrate, No. 1, Kartick, and No. 2, Koosaie, confessed to the charge.—Prosecutor deposes that he was sleeping in the veranda of the eastern apartment of his house, his son, Madop Bhooeeah, witness, No. 1, and his wife and daughter were sleeping inside. About ½ past 12 a. m., the dacoits came and commenced breaking open the door; he challenged them, on which they were about to attack him, but on the door being broke open, and their entering the house he seized the opportunity to escape; on going outside the yard, he called out and alarmed the villagers; when he returned he found that the dacoits had plundered several brass plates and metal vessels, armlets and rings belonging to the women, that his son was wounded on the hand in trying to hold the door against the dacoits, when he alarmed the villagers; Soobul and Rakhal, chowkeedars and Mohes Chung, witnesses, No. 2 to 4, came up, when he returned and found his son wounded, the latter mentioned to him that he had recognized Kartick,

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Case of KARTICK CHUNG and others.

No. 1, Kosaic, No. 2, and Rakhal, No. 4. The dacoits were about an hour in plundering the house; none of the property has been discovered.

Witness, No. 1, Madop Bhooceah is son of the prosecutor. He deposes that he was asleep in the same room with his mother and sister, when the dacoits commenced breaking the door; he got up and held it against them, when doing so as he grasped the bolt at the time, it was broken, his hand was cut with an axe. He remained in the house whilst the dacoits were plundering: they took the clothes which were on his person, and one of them had a torch in his hand in the room; four altogether entered, of whom he was able to recognize Kartick No. 1, Koosaic, No. 2 and Rakhal, No. 4. These prisoners, he states live half a mile off from his house in Noapara; he has known them by sight for a long time, but they were not acquaintances; he recognizes before the court the above-mentioned three persons. He mentions before the sessions that he had stated his recognition of these men on the night of the occurrence, this is contrary to what is in his deposition before the magistrate, but he deposes that his representations were then to the same effect.

Witnesses, Soobul, No. 2, Rakhal, No. 3, and Mohes, No. 4, depose to having come up on the alarm being given by the prosecutor, and recognizing some of the dacoits from the distance of about 10 *russees;* some were watching before the house and some were inside, there were *mussals* with those on the outside and in; they were unable, however, to approach or seize any of them, but followed them on their departure. The witness, No. 2, first deposes to having distinctly seen the prisoners, Koosaie, Kartick and Rakhal; he makes no mention at first to prisoner, No. 6, Jugoo Chung; but afterwards when he is pointing them out, he states that he also had recognized this prisoner. Witnesses, 3 and 4, depose to the same effect, but swear that they distinctly recognized Jugoo when they came up, and that he came forward to attack them with a sword.

The prisoners, Kartick and Koosaic, in their confessions, mention that Rakhal Bagdee accompained them; they make no mention of the prisoner Jugoo.

The evidence against him consists in that of the witnesses, 2 to 4, which is conflicting, and given throughout in a most unsatisfactory manner. No mention of his having been recognized is made by the prosecutor's son, witness, No. 1, and his evidence has every appearance of truth, whilst that of the other witnesses appears made up. He deposes distinctly to the recognition of the two prisoners who confess, and also Kartick Bagdee, who is mentioned by them as

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accompanying. In the confessions, it is stated that all the dacoits, who collected for the purpose, of attacking the prosecutor's house, came either from the villages of Noapara or of Chaparoo, in addition to the omission of the name of Jugoo, there is no allusion to any one having come from the village of Sheegreh, where he resides. The testimony, under circumstances, of the witnesses, 2 to 4, I do not think sufficient to prove the charge against him, and he is accordingly acquitted. With respect to the other prisoners, they are shown, Nos. 1 and 2, Kartick and Koosaie, to be guilty by their own confessions and the evidence of Madop, witness No. 1, with what is stated at the same time in the confessions and by the other witnesses, establishes the crime against Rakhal Bagdee, No. 4. There was no attack made, it is to be observed, with a design of wounding the witness No. 1; on the contrary the dacoits are shewn to have spared the persons, both of this individual and the other inmates of the house, his hurt was accidental. Rakhal having been before in jail, I sentence him to twelve (12) years' imprisonment with labor and irons; the others to ten (10) each.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Considering that the dacoity was unattended with any circumstances of aggravation, the punishment may appear rather severe; but this crime has become so frequent in Hooghly and the neighbouring districts, that a rigorous infliction of the penalties enacted against it has unquestionably become necessary. Holding the guilt of the prisoners to be fully established, I accordingly confirm the sentence of the sessions judge.

PRESENT:

J. DUNBAR, Esq., *Judge*.

SEEBOO KOLOO AND GOVERNMENT
versus
MUDHOO BISWAS.

NUDDEA.

1853.

May 5.

Case of MUDHOO BISWAS.

The prisoner was convicted of burglary, and the sentence of the sessions judge was confirmed by the Nizamut Adawlut.

CRIME CHARGED.—Burglary in the house of the prosecutor, Seeboo Koloo, and his brother, Nobin.

CRIME ESTABLISHED.—Burglary in the house of the prosecutor, Seeboo Koloo.

Committing Officer—Baboo Issurchunder Ghosal, Deputy magistrate of Santipore, Zillah Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 24th February 1853.

Remarks by the sessions judge.—There is nothing of any importance in this case to notice. The prisoner was committed, being an old offender and punished before for a similar offence, and was convicted on the grounds of the evidence of the witnesses to his apprehension on the spot where the burglary was committed, and his confession before the police.

Sentence passed by the lower court.—Five (5) years' imprisonment, and two (2) years' in lieu of corporal punishment, being in aggregate to seven (7) year's with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner was caught in the act, just as he had effected his entry into the house, by digging through the wall. He has been before the courts so often as an evil-doer, that exemplary punishment is necessary. The sentence is confirmed.

PRESENT:

SIR R. BARLOW, BART.,
W. B. JACKSON, ESQ., } Judges
J. DUNBAR, ESQ.,

GOVERNMENT

versus

KHETRO MOOCHEE (No. 5), MADHUB HAREE (No. 6), MUDDOO MOOCHEENEE (No. 7), BIMOLA MOOCHEENEE (No. 8), ROOPCHAND MOOCHEE (No. 9), MOTHOOR MOOCHEE (No. 10), MUDDOOSOODUN HAREE, CHOWKEEDAR (No. 11), AND RAKHAL DOSS CHUNGO, GOMASTAH (No. 12.)

EAST BURDWAN.

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Case of KHETRO MOOCHEE and others.

Two persons (a man and his *paramour*) convicted of murder from enmity, the former as principal, the latter, as an accomplice. The man sentenced to suffer death—the woman to be imprisoned for life in the zillah jail. Two others convicted as accessaries after the fact, and sentenced to imprisonment for seven years with labor in irons.

CRIME CHARGED.—Prisoner, No. 5, with the wilful murder of Nitaie Moochee. Prisoner, No. 6, 1st count, with the above wilful murder; 2nd count, being an accomplice in the above wilful murder, and 3rd count, being privy to the above wilful murder. Prisoners Nos. 7 and 8, 1st count, with being accomplices in the above wilful murder, and 2nd count, being privy to the above wilful murder. Prisoners Nos. 9 to 11, with being privy to the above wilful murder, Nos. 6 and 11, were police chowkeedars at the time of the occurrence. Prisoner No. 12, 1st count, with being accessary after the fact to the above wilful murder, and 2nd count, with being privy to the same.

Committing Officer—Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 22nd April 1853.

Remarks by the officiating additional sessions judge.—I commenced the trial with the aid of the law officer and had taken down the plea of the prisoners and partly examined the first witness for the prosecution, when that official communicated to me that the *taluqdar* in whose possessions the murder took place and whose agent or *gomastah* is the prisoner, Rakhaldoss Chungo, No. 12, holds a lease from him for some *aima* lands and might in consequence possibly be regarded as in a measure connected with him or his interests. I thought the matter sufficiently weighty to induce me to dispense with his services, and recommenced the trial with the assistance of assessors.

The prisoners are respectively charged with wilful murder, complicity in and privity to the same, and plead *not guilty* to all the counts of the indictment.

The widow of the murdered man, (Nitaie Moochee), Parbuti Moocheenee by name, deposes, that hearing her husband who was sleeping in the veranda, groaning and moving about in a

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Case of
KHETRO MOOCHEE and
others.

strange convulsive manner, she went out to see what was the matter, when she found him in the agonies of death with a wound inflicted on the side of the neck from which blood was flowing profusely, and the prisoners Khetro Moochee, Madhub Harree, Muddoo Moocheenee and Bimola Moocheenee moving off in different directions. She adds, that she began to cry, when the prisoners, Madhub Harree, Muddoossoodun Harree and Rakhaldoss Chungo induced her to return into the house and fastening the door from the outside, kept her prisoner all night, and that she was released the next morning by her brother-in-law, the prisoner, Roopchand Moochee. She also mentions that she was taken to the zemindar's cutcherry, and detained there three or four days against her will, and ascribes the murder of her husband to his interfering with, and interdicting the further progress of criminal intercourse between the prisoners, Khetro and Muddoo Moocheenee and Madhub and Bimola Moocheenee, carried on principally at his house, owing to the connection between him and the females concerned.

The next four persons examined for the prosecution prove, that the last witness screamed and made lamentation on the night of the murder, and that going to her house they found her husband dead in the veranda, lying in a pool of blood which had flowed from a wound on the side of his neck. They also, with slight variation of detail, state that the prisoners Muddoossoodun Harree, chowkeedar and Rakhaldoss Chungo, *gomastah*, were at the house of the deceased at the time, and forbade the communication of the murder to the police authorities enjoining strict silence on the subject.

The witness, Chitun Moochee, is the person who presented a petition to the magistrate by means of which this murder was made known and enquired into. It had been most effectually concealed up to that period; but his deposition throws no light upon the subject, being purely a hearsay testimony.

Muddoosoodun Seuti deposes, that the prisoner Khetro Moochee borrowed a *dao* from him in Kartick to cut wood required for a spinning machine, and returned it the following day. This evidence is valueless, as the result will show, that the weapon in question was not the instrument employed on the occasion.

The next witness details with great accuracy and minuteness the confessions of the prisoners Khetro, Madhub, Muddoo and Bimola. They were made before him as the police darogah had taken down in his own hand-writing; other witnesses also verify and attest these confessions.

Four persons prove the confessions made by the prisoners Khetro, Muddoo, Roopchand and Mothoor before the magistrate and attest the records.

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The mofussil and foujdarry confessions of the prisoners in substance run thus and coincide in all material points. The prisoner Khetro Moochee admits, that the prisoners Madhub Haree, Muddoo Moocheenee and Bimola Moocheenee came to him one night and insisted on his accompanying them to the house of the deceased Nitaie Moochee, for the purpose of murdering him; that he refused to do so, but was over-ruled by the threats and inducements of the other prisoners; that on reaching the spot and seeing his victim lying asleep in the veranda, his heart failed him and beginning to cry, he refused to commit the deed; that the prisoner Madhub menaced him with the *dao* he had brought and advanced to strike him with it, when he made the excuse that there was no use in attacking the deceased as his head and shoulders were covered with a quilt; that the same prisoner then removed the covering and called on him to strike; that he again hesitated and was again threatened, till at last from sheer despair taking the weapon out of Madhub's hand, he inflicted two blows on the neck of the deceased, the last of which nearly severed the head from the trunk. He adds, that the women were standing by and fled with him and Madhub, when the wife of the deceased came out and discovering the plight her husband was in, began to scream and make lamentation.

The prisoner, Muddoo Moocheenee, corroborates the above statements in both her confessions, and admits having gone to the prisoner, Khetro, returned with him to the house of the deceased and witnessed the murder, which she described in the manner above detailed by the prisoner, Khetro Moochee.

The other two prisoners, Madhub and Bimola, told precisely the same tale before the darogah, but repudiated their confession before the magistrate. The confession of the prisoners, Roopchand Moochee and Mothoor Moochee, refers only to the removing of the body of the deceased by order and under the intimidation of the prisoners, Muddoosoodun Haree and Rakhaldoss Chungo.

The prisoners deny the charge and repudiate their confessions. Khetro Moochee says, that he was seized at the thannah after conveying a box there, and made to say he knows not what, which was taken down by the darogah. Madhub Haree, that this charge has been got up against him for refusing to give evidence in a false case of dacoity got up last year against the prisoner, Rakhaldass Chungo. Muddoo Moocheenee makes no defence. Bimola declares herself to be the victim of a plot laid against her by the widow of the deceased, Nitaie, who has a *penchant* for her (prisoner's) husband, and wishes her out of the way. Roopchand Moochee confines himself to a simple denial of the charge. Mothoor Moochee says, he has been charged

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because he gave evidence in the case in which Madhub Haree refused. Muddoosoodun Haree declares, that no occurrence of the sort brought forward in the prosecution ever took place in his beat; and Rakhaldoss Chungo says, that the villagers have conspired against him and made this accusation the means of getting him into trouble, having failed last year to fix him with a fictitious dacoity.

None of the prisoners call witnesses, except the prisoner Rakhaldoss, but his plea is not advanced by the evidence they give.

The verdict of the assessors finds the prisoner, Khetro Moochee, guilty of wilful murder on his confessions before the police and the magistrate; the prisoner, Muddoo Moocheenee of being an accomplice in and privy to, wilful murder, and the prisoners Muddoosoodun Haree and Rakhaldoss Chungo of being privy and accessaries after the fact to wilful murder. It finds the prisoners, Madhub Haree and Bimola Moocheenee *not guilty* for want of proof, and declares the prisoners Roopchand Moochee and Mothoor Moochee as undeserving of punishment, for removing the body of a deceased relative under threats and intimidation.

I concur in the verdict and submit the trial for the final orders of the Court with the following recommendation. The prisoner, Khetro Moochee, has confessed both before the police and the magistrate, and his confession amounts to wilful murder; but the only evidence against him is his confession, and that must be taken literally. The record discloses the fact that the prisoner was not a willing agent, but perpetrated the deed under menaces and compunction, and that circumstance must necessarily make in mitigation of the prisoner's crime and punishment. I would therefore recommend that he be imprisoned in transportation for life, instead of undergoing the extreme penalty of the law.

I convict the prisoner, Muddoo Moocheenee, of being an accomplice in the murder and privy to the same, and would propose that she be sentenced to ten (10) years' imprisonment with labor suited to her sex, it appearing that she had a personal interest in the death of the deceased, Nitaie Moochee.

I also convict the prisoners, Muddoosoodun Haree and Rakhaldoss Chungo of being privy to the murder and accessaries after the fact, in removing and disposing of the body and destroying all traces that might have led to the detection and punishment of the culprits, and would sentence them to six (6 months' imprisonment without labor or irons, which in addition to the period during which they have already been in custody, will make their term of incarceration equivalent to nearly twelve months.

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Deeming the evidence against the prisoners, Madhub Haree and Bimola Moocheenee insufficient to establish their guilt, I have ordered their discharge, and viewing the part taken by the prisoners, Roopchand Moochee and Mothoor Moochee, in the transaction as forced on them through fear and undeserving, under the circumstances, of any punishment, have declared them entitled to their release, the more so that these persons were sent in by the darogah as witnesses for the prosecution, and in the first instance examined by the magistrate on solemn declaration.

Remarks by the Nizamut Adawlut.---(Present: Sir R. Barlow, Bart., and Messrs. Jackson and Dunbar.)

MR. DUNBAR.---The body of the murdered man was not found, but I see no reason on this account to entertain any doubt, as to the fact of the murder. The evidence on this point is of the very strongest character. Several persons have sworn positively to having seen the unfortunate man with his head nearly severed from his body, and the confessions on the record fully confirm their testimony. The reason too, why the body was not found, is perfectly clear, while it was yet lying bleeding before them, Rakhaldoss, gomashtah, and Muddosoodun, chowkeedar, expressed their determination in the hearing of several witnesses, to conceal the murder, and there can be little doubt that they had the body thrown into the river at the spot pointed out to the darogah by Madhub Haree.

The case is a most atrocious one, and calls for exemplary punishment. The assessors in their written opinion, in which the session judge concurs, find the prisoners, Madhub Haree and Bimola Mocheenee *not guilty*. I am quite at a loss to understand how the assessors came to this conclusion. They state that the only evidence against these prisoners is their mofussil confessions, but they give no reasons for considering these insufficient. The confessions were fully proved both by the evidence of the darogah and that of the attesting witnesses; no evidence was adduced, and nothing occurred in the course of the trial, tending to throw any doubt upon the entirely voluntary character of the confessions, and such being the case, they ought to have been received.

I concur in the finding against the prisoner, Khetro Moochee, but not in the sentence proposed; I do not admit that there is any force in the arguments in favor of mercy put forward by the sessions judge. The man appears to me to have acted with the utmost deliberation. He admits that he entertained feelings of malice towards the deceased, because he had found fault with him on account of his intrigue with the deceased's sister-in-law, Muddoo Mocheenee. He it was, who carried with him the *dao*, with which the murder was perpetrated;

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and he was the person, who took the life of the sleeping man, by two cuts of the *dao*, after he had made sure of doing its bloody work thoroughly and efficiently, by getting another person to remove the cloth which protected the neck of the sleeper. I would sentence the prisoner, Khetro Mochee, to suffer death.

In her mofussil confession, the truth of which she acknowledged in that subsequently made before the magistrate, Muddoo Moocheenee admitted that she and Khetro and the two prisoners acquitted, had consulted about the murder some days before, and she clearly showed herself to have an interest in it, and to be a consenting party to it by accompanying Khetro and the others, and standing quietly by, while the deed was doing. I convict her as an accomplice and would sentence her to imprisonment for life in the zillah jail, with labor suitable to her sex.

I concur with the sessions judge in convicting Muddoosoodun Haree and Rakhaldoss as accessaries to murder after the fact. The punishment proposed, however, appears to me utterly inadequate to the magnitude of their crime. The one was a chowkeedar and the other a gomashta, the very persons of all others, whose duty it was to give notice of the murder at the thannah, instead of which, it is clear, that they used all the influence arising from their position, to stifle inquiry and conceal the murder I would sentence them to imprisonment for seven (7) years, with labor in irons.

MR. JACKSON.---The evidence in this case is in the first place of the widow of deceased, who came out on hearing her husband making strange noises in the veranda, where he slept, and found that his throat was cut and he was dead: she screamed out violently, and at the same time saw Khetro, Madhub and the women Muddoo, and Bimola runing away: she adds that Muddoo Sain and Rakhaldoss induced her to go into her house, where they locked her in; and in the morning when Roopchand let her out, the body of her husband was gone. Besides the above four other witnesses, who came on the widow's cries, say, that Muddoo, chowkeedar and Rakhaldoss told them to say nothing about it; the witness Cheytun says, Rakhaldoss told him not to make a noise there, but to give a petition to the magistrate at the sudder station; that Rakhaldoss went with him for this purpose and got the petition written for him; he presented it, and it led to the enquiry and trial.

Besides the above, there is nothing but the confessions, and it must be presumed that the confession of one prisoner is no evidence against another; the prisoner Khetro confesses, that he killed the deceased by order of the prisoner, Madhub, who has been released by the sessions judge; he says, that Madhub

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on the first instance made him go, by threatening and offering to kill him if he would not go, and in the same manner he made him kill the man as he lay sleeping, though he refused repeatedly, by offering to kill him if he would not: if I believed this statement of the force and intimidation, I should of course hold Khetro in some measure excused, but by no means entirely; but I do not believe it: moreover, Khetro having a weapon in his hand, had no sufficient excuse for being intimidated into such an act; he might easily have escaped. I would convict him of the murder and sentence him to death. Musst. Muddoo also confesses being present when Khetro killed deceased: and the widow recognized her as present afterwards; Muddoo's confession is to this effect:---I am living with Khetro and was sometimes in his house, deceased had threatened Khetro one night; the woman Bimola and myself went outside to relieve nature; Madhub came and said Khetro calls you, and says, he will kill Nitaie (deceased): *I told him not to do so:* Nitaie was then sleeping in his veranda: Muddoo then threatened me and Bimola and took us to Khetro's; he was asleep: Muddoo woke him and called him out and then we all four came to my house; they put us in the *ootan* (open court yard.) We remained there; Madhub then took off some of Nitaie's clothes and Khetro with a *kataree* struck him on the throat; we were going to call out, but they threatened to kill us; then Nitaie's, (deceased's) wife came out, and made a noise: then we ran away to our houses and the men ran away too.

Now in all this confession no act on the part of Musst. Muddoo is admitted that would make her an accomplice, except the being present; she and Bimola are apparently both of them in habits of intimacy with Khetro and Madhub, or both: but there was no counselling, or advising, or assisting in any way; she might have done more to prevent the murder; but I cannot find any thing on which to convict her as an accomplice; looking to her sex and the violent character of the men, her associates, who would probably have cut her down on the slightest provocation, I would not consider her mere presence as constituting her an accomplice; but would acquit her.

As regards the other two prisoners, Muddoosain, chowkeedar, and Rakhaldoss, the gomashtah, it is plain that they hushed up the affair and had the body removed: and thus prevented the case from being thoroughly sifted: but as it is in evidence of Cheytun witness, that Rakhaldoss went with him to the sudder station, and helped him to get a petition to the magistrate, giving information of the occurrence, it would appear, that his fear was rather of the police than the magistrate, or, perhaps finding he could not prevent Cheytun from giving information.

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he went with him to give himself a means of getting out of the scrape; I would convict both these prisoners, Muddoo, chowkeedar and Rakhaldoss, gomashtah, as accessaries after the fact, and would sentence them to five (5) years' imprisonment with labor and irons.

SIR R. BARLOW.---Messrs. Jackson and Dunbar have disposed of this case save as regards, prisoner, No. 7, Muddoo Moocheenee and No. 11, Muddoosoodun Haree, chowkeedar, and No. 7, supplemental calendar, Rakhaldoss. Mr. Jackson would acquit, for the reasons recorded in his minute, the prisoner No. 7; Mr. Dunbar's minute on the trial sentences her to imprisonment for life in the zillah jail with labor suitable to her sex. Her very detailed confessions show, that she was long previously aware of the murderous intentions of prisoner No. 5, her paramour, whom she was desired to call by prisoner No. 6, on refusing to do so, she accompanied No. 6 to the house of No. 5, who was asleep, he was awakened and took up a *dao* with which he returned to No. 7's house, where deceased was sleeping, she was close to the spot where the murdered Nitaie was sleeping---she saw the preparations made for dispatching him, and saw the deed actually committed by No. 5, though she might intermediately awakening deceased, have averted the desperate and fatal attack upon him. But she remained a silent spectator of all, and it may fairly be inferred, as much from what she did not do, as from what she did, that she was no unwilling participator in the murder. I concur, therefore, with Mr. Dunbar in convicting her of being an accomplice, and join in sentencing her to imprisonment in the zillah jail for life, with labor suited to her sex. The prisoners, Nos. 11 and 7, supplemental calendar, being parties who should have aided in the discovery and punishment of the offenders, are justly held to have been accessaries after the fact and I concur in passing sentence of seven (7) years' imprisonment with iron and labor upon them, as proposed by Mr. Dunbar.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND JAY HALDAR
versus
SREEBAS DASS BYSTUM.

NUDDEA.
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May 5.
Case of SREEBAS DASS BYSTUM.
The prisoner was convicted of dacoity with wounding. The sentence of the sessions judge confirmed.

CRIME CHARGED.---1st count, dacoity attended with wounding in the house of the prosecutor, and property plundered to the value of rupees 63 and 14 annas, and further wounding the plaintiff, and 2nd count, knowingly receiving and having in his possession plundered property, acquired by the above dacoity.

CRIME ESTABLISHED.---Dacoity attended with wounding in the house of the prosecutor in which property to the value of rupees 63 and 14 annas was plundered and the prosecutor was wounded.

Committing Officer---Mr. G. Hewett, deputy magistrate of Cutwah.

Tried before Mr. J. C. Brown, sessions judge of Nuddeah, on the 5th February 1853.

Remarks by the sessions judge.---The fact of the prisoner having been seized with a portion of the property, which had been plundered from the prosecutor in the act of retreating from his house, and the wounds received by him at the hands of the dacoits have been clearly established.

The prisoner merely denied the charges; he made no defence, and though he called three witnesses, he declined having any examined.

The crime of dacoity attended with wounding having been established, the prisoner has been sentenced accordingly.

Sentence passed by the lower court.---Imprisonment for fourteen (14) years, with labor in irons in banishment.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. Dunbar.)---Seven witnesses have sworn to the capture of the prisoner while endeavouring to make off with part of the plundered property. I see no reason whatever to doubt the truth of their statements, and reject the appeal.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

CALICHURN SIRDAR, ON THE PART OF MR. G. W. BATTYE AND GOVERNMENT

NEPAL SHEIKH (No. 14), GOLUCK SAKRAH (No. 15), AND OOMACHURN SURNAKAR (No. 16.)

NUDDEA.

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May 6.
Case of NEPAL SHEIKH and others.
A prisoner, Khidmutgar, in charge of his master's plate, convicted of stealing a portion to the extent of 138 rupees, sentenced to 7 years' imprisonment in banishment with labor and irons.
Two prisoners, the receiver of the property so stolen, sentenced, one to 7 years with irons and labor; the other, his son, to 3 years also with irons and labor.

CRIME CHARGED.—1st count, No. 14, theft of property, valued at company's rupees 200, entrusted to him while employed as a servant of the master of the prosecutor, Calichurn Sirdar; 2nd count, Nos. 14, 15 and 16, accomplices in the said charge; 3rd count, Nos. 14 and 15, accessaries after the fact, and 4th count, having in their possession, and disposing of the said property, knowing it to have been acquired by the said theft.

CRIME ESTABLISHED.—On No. 14, theft of property valued at company's rupees 138, entrusted to him while employed as a servant of the master of the prosecutor, Calichurn Sirdar, and on Nos. 15 and 16, receiving, keeping possession of, and disposing of stolen property knowing it to have been obtained by theft.

Committing Officer—Mr. C. F. Montresor, magistrate of Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 26th February 1853.

Remarks by the sessions judge.---The prisoner, No. 14, was a servant of G. W. Battye, Esq., and as such, had charge of his plate chest, during the absence of the head servant.

When he returned, he discovered that a quantity of the plate was missing, and suspicion fell upon the prisoner abovementioned.

He at first denied all knowledge of the theft, but after a while he said he would point out where it was.

He was accordingly accompanied and he went to the house of the other two prisoners who acknowledge having received some articles of silver plate, similar to those which were described, from the first prisoner, but did not give up any part, saying that they had received it to dispose of and to pay the proceeds to him. They accordingly melted down the plate which weighed 120 rupees when there was a loss of 14 rupees alloy and they sold the pure silver for 106, of which they gave him 100 rupees and retained the remaining 6 for their trouble.

The first named prisoner pleaded guilty to the charge, and the remaining "*not guilty*," but they made no defence and would not have any witnesses examined on their behalf.

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Case of Nepal Sheikh and others.

Sentence passed by the lower court.—Prisoner, No. 14, to seven (7) years' imprisonment with labor in irons in banishment. Prisoner. No. 15, to seven (7) years' imprisonment with labor in irons, and prisoner. No. 16, to three (3) years' ditto.

Remarks by the Nizamut Adawlut.---(Present: Sir R. Barlow, Bart.)—The prisoners are fully convicted of the crimes recorded by the sessions judge. I confirm the sentence passed on them.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

JUDOONATH DEY.

East Burdwan.

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Case of Judoonath Dey.

The prisoner was convicted of being an accomplice in the murder of a boy for the sake of his ornaments, and sentenced to imprisonment for life in transportation beyond sea

CRIME CHARGED.---1st count, willful murder of Rajjhandro Sit, for the sake of his ornaments, and 2nd count, theft of ornaments and clothes, valued at rupees 100-4.

Committing Officer—Mr. A. Pigou, magistrate of East Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 25th April 1853.

Remarks by the officiating additional sessions judge.—The prisoner pleads *not guilty* to both charges.

The evidence against the prisoner is purely circumstantial, and consists of the testimony of those who saw him in company with the deceased, the last time the latter was seen alive. The first witness is the deceased's brother, who, not finding the boy at home, on his return in the evening, asked where he had gone, and on learning that he had left the house a few hours before in company with the prisoner, made an ineffectual search for him up to 2 A. M. He was informed the next morning that the corpse of his brother had been discovered on the banks of a river buried in the mud, and going to the spot, and having the dirt removed from the face, identified the body. He says that his brother wore a gold necklace, a pair of gold bangles, and gold ear-rings and a silver chain round his waist, and these ornaments together with the clothes he had on, amounted in value to rupees 100-4, none of which were found on the corpse.

The next witness is the person who saw the prisoner take deceased away on the promise of buying a goat for him on the afternoon of the day he was missed, and informed his brother of the circumstance on his return home. He also helped to make search for the deceased all night without effect and saw

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the above enumerated ornaments on his person when he left the house with the prisoner.

Another witness deposes to the fact of having seen the deceased in company with the prisoner about 4 P. M., on the day he disappeared, having on some of the ornaments mentioned, and the rumour of his body having been found the following day near the bed of a river.

The foujdarry gomashta of the village is the next deponent, and states that on receiving intimation of the disappearance of the deceased, he commenced a search with his peiks and chowkeedars, and late in the afternoon of the same day, learned that a body had been discovered on the banks of the river embedded in the mud; that he went to the place and perceived one of the hands of the corpse appearing above the mud and immediately sent word to the police jemadar, who came and had the body raised. He adds that the body was that of the deceased; that it exhibited marks of bruises or contused wounds on the forehead and temple, and was stripped of every thing in the shape of jewels or ornaments. He also verifies the confession of the prisoner as given before the police, and attests the record of that confession, as well as of the inquest held on the body. And he further states, that the prisoner is addicted to gambling and his society shunned in consequence.

Another party, Ramji Napit, deposes to the fact of having seen the deceased and the prisoner together near night-fall of the day, the former disappeared at a still greater distance from home. He says that the deceased took a few whiffs of his hookah *en passant* and told him that he was going with the prisoner to purchase a goat, and adds that he wore at the time gold ear-rings and gold bangles, which were all the jewels visible in consequence of his having wrapped his clothes about him on account of the cold.

The rest of the witnesses for the prosecution prove the record of the inquest held on the body of the deceased, the confession made by the prisoner before the police, and his arrest at night after absconding for six days, at the distance of eight miles from home, during which act he made partial attempts to evade detection.

I think it due to the prisoner here to remark, that in my estimation it is a suspicious circumstance, that he was removed from the thannah, where he had been in custody all night, and taken to Baidpore, a distance of four *coss* to confess, and that the consideration operates hostilely, to the unexceptionableness of the confession.

The examination of the civil surgeon proves, that the body exhibited both external and internal marks of injury. There appears to have been a wound near the temple and a large

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quantity of coagulated blood under the scalp, particularly over the forehead and left temple. The muscles of the temple and chest were in a bruised state and the brain and lungs congested. Mr. Hastings is of opinion, that death was caused by suffocation, and that violence was used to effect it.

The prisoner's confession before the police amounts to complicity in the murder, and ascribes the actual deed to one Chundra Bushtomi, his concubine. It also discloses the fact that the jewels were shared between him and the woman in equal parts.

The prisoner denies the charge, and says, that the case has been got up against him by Fukeerchand Sit, the brother of the deceased, from malicious motives, the cause of which he is either unwilling or unable to disclose. He cites one witness to prove, that he was unlawfully arrested and confined in a private house by the darogah and others, but the evidence of this individual makes rather against than for him, as it states, that he disappeared the night the deceased was missed and remained absent for several days, until arrested at Culna about eight miles off.

The *futwa* of the law officer convicts the prisoner on violent presumption, of being an accomplice in the homicide of Rajendur Sit for the sake of his ornaments, and declares him liable to discretionary punishment by *akoobut*.

I concur in the verdict, but convict the prisoner of wilful murder and robbery. He is a young man of questionable character, without any ostensible means of gaining an honest livelihood, and addicted to the vice of gambling, and these considerations have their weight in inducing me to believe him guilty; but he is still a youth (under 20 years of age) and I would fain on that account supplicate the mercy of the court on his behalf, in mitigation of the awful penalty of the law which he has incurred by his crime. I would plead for his life, and being of opinion that justice will be satisfied by his perpetual imprisonment in transportation beyond sea, recommend that sentence.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—A sufficient explanation is given both by the darogah in one of his reports, and by the acting mohurrir on oath, at the trial, in regard to the removal of the prisoner from the thannah to Baidpore, before his confession was taken. He was captured at a distance from the place where the body was found, and it was thought desirable before examining him, to bring him to the spot, and make sure of his identity. His confession is fully proved by the attesting witnesses. I convict the pri-

soner upon that confession (and with reference to the other evidence against him) of being an accomplice in the murder, and under the circumstances of the case, sentence him to be imprisoned for life in transportation beyond sea.

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PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

PETUMBER DASS.

BACKERGUNGE. 1853. May 6. Case of PETUMBER DASS. Conviction and sentence passed by the sessions judge on a prisoner, in a case of affray attended with culpable homicide and wounding, confirmed in appeal.

CRIME CHARGED.—1st count, wilful murder of Meheroollah, and 2nd count, affray attended with the culpable homicide of Meheroollah and the wounding of Tumeezooddeen and Kumeeroodeen.

CRIME ESTABLISHED.—Affray attended with culpable homicide and wounding.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, officiating sessions judge of Backergunge, on the 14th January 1853.

Remarks by the officiating sessions judge.—The original case of which this is a supplement, was tried at the sessions of this district in June 1849. The affray was a mutual one by the adherents of two different parties headed by Joynarain Ghose on one side, and by Petumber Dass, the prisoner, on the other. Both sides were convicted by the zillah judge and sentenced to different degrees of punishment. Those on the side of Joynarain were afterwards released by the Nizamut, who considered that the fight on their side was justified, but the sentence of the zillah judge on the opposite party was confirmed; *vide* the remarks* of the Nizamut Adawlut, dated the 20th October 1849, on the trial of Malkhar and others.

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* *Remarks by the Nizamut Adawlut.*—(Present: Sir R. Barlow.)—On the trial of Mallkhar and others, dated 20th October 1849.

The magistrate has evinced a want of discretion in the commitment of this case.

The prisoner No. 21, Joynarain Ghose, was in quiet possession of his own cutcherry and that of Onoda Soondree, his niece, the daughter of Muddun Mohun Ghose. The prisoners, 12 to 18 and 20, on the part of the alleged adopted son, Deginder Narain, of Muddun Mohun, deceased, came from a distance and attacked, and plundered the cutcherry. Joynarain's people defended it against their opponents, who had been for some weeks previous threatening an attack. I risoner, 25, Nobbokishen Roy, gomashta of Joynarain, had petitioned the magistrate and a burkundauz was, in consequence, deputed to keep the peace so far back as the month of Pous. The attack was made on the 17th Phalgoon; Joynarain's party defended the cutcherry and their property against this unwarrantable attack, and were perfectly justified

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The prisoner is proved to have been present in the affray on the side of the party, who have been declared guilty. In his defence he pleads an *alibi*. The evidence against him being strong and such as occasioned the conviction of the other persons fighting on his side, it was impossible to avoid a suspicion, that the prisoner had made good use of the time that he was able to elude the search of the police in concocting a false defence and getting his friends to support it. The witnesses to the *alibi* were accordingly put to a strict cross-examination and their statements, as might be expected, elicited an abundance of contradictions, such as to fix upon their evidence the stamp of falsehood.

The jury found the prisoner guilty of the charge laid in the second count, and he was convicted and sentenced accordingly.

Sentence passed by the lower court.---To be imprisoned for five (5) years, with labor in irons, from the 14th January 1853.

Remarks by the Nizamut Adawlut.---(Present: Sir R. Barlow, Bart.)---The prisoner was the leader of a party who attacked the cutcherry of Joynarain Ghose in 1849. Both parties were committed on charge of mutual affray, and convicted by the sessions judge. On appeal to this Court, Joynarain's party were acquitted, on the ground of their having defended themselves against an unjustifiable attack upon their cutcherry. The prisoner was named on the former trial. He absconded, and was only apprehended in October last. He was again named and recognized on the occasion of this trial. He pleads *alibi*, and has brought forward four witnesses to swear to his presence at

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in so doing, if the police on the spot were unable or unwilling to defend them. It is quite an error to call such a transaction an affray, and it would be an injustice to punish those, who acted in self-defence.

The prisoners, Nos. 21 and 22, are charged with promoting and instigating the above number of persons, that is, all the other prisoners, 14 in number, in the commission of the aforesaid crimes, *viz.*, 1st. the murder of Meheroollah (their own servant) and in the affray. It is not to be supposed that Joynarain' people killed the deceased, who was one of their own party, or that they wounded Tumeezooddeen and Kumeerooddeen also of the same party. The wording of the charge against the prisoners, 21 and 22, clearly indicates a want of care in its preparation.

The evidence of the witness, No. 2, Lochie, chowkeedar, under the circumstances noted by the sessions judge, should not have been placed on the record, as an inquiry was still pending as to his absence from the spot where the affray occurred, and on the result of that enquiry, it could only be known whether his evidence was worthy of any credit.

I concur in the sentence passed by the sessions judge on the prisoners, Nos. 12, 13, 14, 15, 16, 17, 18, and 20.

I do not concur in the conviction of the prisoners, 21 and 22, or in that of the prisoners, 23, 24, 25, 26, and 27, all of whom were servants of Joynarain, save the prisoner, 27, who is a very aged man and against whom the evidence is not satisfactory.

Kalee Ghat when the assault was made. His witnesses after the lapse of nearly four years give the particulars of the different conversations that passed between them and the prisoner. The judge and jury discredit the evidence for the defence. I concur with them, and confirm the sessions judge's sentence on the prisoner.

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PRESENT:

J. DUNBAR, Esq., *Judge.*

RAJKISHORE SURMA AND GOVERNMENT

versus

RAMGOPAL DEB (No. 13, APPELLANT), KUNTEERAM DHOOBEE (No. 14), AND SUMBHOO GHOSE (No. 15).

MYMENSING.

1853.

May 6.
Case of RAMGOPAL DEB and others.

Two prisoners convicted of burglary and theft, and another of knowingly receiving stolen property. The sentence of the sessions judge of four years' imprisonment with labor and irons confirmed.

When prisoners are arraigned on two or more distinct counts, the particular crime established against each should be distinctly recorded.

CRIME CHARGED.—1st count, committing burglary in the house of Radhamonee Dibia and theft of cash and property, valued at rupees 210-½ anna, and 2nd count, knowingly receiving and possessing property obtained by the above theft.

CRIME ESTABLISHED.—Burglary, and knowingly receiving property obtained thereby.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensingh.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 22nd March 1853.

Remarks by the officiating sessions judge.—It appeared on trial that the prosecutor's sister, who resided in his house, had gone for a few days during the festival of the last Doorga poojah holidays to visit, on invitation, a family of the rajah of Soosung, leaving a servant, Ramkanth Bhat, to watch her house during her absence, and it was in this interval that her house was burglariously entered and a large chest opened, and property consisting of cash, gold and silver jewels, brass and copper utensils, and clothes stolen. Notice was given to the police by the servant who himself was at first suspected but discharged by the darogah for want of proof, and while the darogah was making enquiries, it having been reported that prisoners Nos. 13 and 15, were dividing among themselves clothes which persons of their class were not in the habit of using, they were taken up, when No. 15, confessed to having committed the burglary with Nos. 13 and 14, and three other persons including the servant, Ramkanth Bhat, and gave up the property which fell to his share. Nos. 13 and 14, also gave up part of the property, saying that they did not themselves commit the theft but that it was given to them by No. 15, partly to keep and partly as an inducement to them to keep the matter a secret, which they gave up from the place where they had buried

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it, &c., as described in column 11 of the calendar. In the foujdarree court, No. 13 said, that he was taken by No. 15 to commit the theft; that he remained outside when they committed the theft and gave him a share of the property. No. 14, that he saw No. 15 concealing the articles in a hole, and he desired him not to mention it to any one, but when the darogah came he pointed out the place from where the property was recovered. No. 15 denied the charge saying that he made over his own articles through maltreatment and denied also his mofussil confession. In this court, Nos. 13 and 14 denied committing the theft themselves and that the articles they made over was given to them by No. 15 to conceal. No. 15 denied the charge saying, he was a man of good character. Of the prisoners No. 15 only named witnesses to his defence, of whom however he only examined one, a relation, who said he was a man of good character. The jury declared all the prisoners guilty of the crime charged, in which finding I concurred, as the property was found upon them or given up by them, for which they could not satisfactorily account, nor Nos. 13 and 14 assign any plausible reason why they had concealed it.

Sentence passed by the lower court.—To be imprisoned with labor and irons each for the period of four (4) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The sessions judge remarks, that he concurred with the jury in finding the prisoners "guilty of the crime charged;" but as they were arraigned on two distinct counts, he should have stated distinctly which of these he held to be proved against the prisoners, respectively, instead of lumping them up together. The prisoner, Sumbhoo Ghose, in the mofussil, made a full and clear confession to having with others broken into the house, and stolen the goods; and Ramgopal confessed before the magistrate, that he was one of the party who committed the robbery.

The crime proved against these men is simply burglary and theft.

Kunteeram confessed that he received certain stolen articles from Sumbhoo with the purpose of concealing them from the police, for which he was himself to get one-half. His crime is knowingly receiving and possessing stolen property.

The court see no reason to interfere with the sentence; but the sessions judge will amend the record of conviction with reference to the above remarks.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

GOVERNMENT

versus

MUSSAMUT TOONEE.

TIPPERAH.

1853.

May 7.

Case of MUSSAMUT TOONEE.

A female prisoner convicted of perjury. Sentence mitigated to one year's imprisonment in conformity to the recommendation of the sessions judge.

CRIME CHARGED.—Perjury in having on the 21st April 1853, corresponding with 12th Bysack 1260, deposed under a solemn declaration taken instead of an oath, before the magistrate of Tipperah, that "she has no relationship with Punchanund, nor does she know him." Such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 26th April 1853,

Remarks by the sessions judge.—The prisoner was charged with perjury under the following circumstances:

On the 31st of March, one Punchanund petitioned the magistrate stating that his niece, the prisoner, had been forcibly confined by certain persons, and that he apprehended she might be seriously ill-used. He prayed that the police might be directed to release her, when her evidence would furnish the magistrate with the necessary details as to the circumstances of her imprisonment.

The magistrate directed the darogah of Haujeegunge to send in the petitioner's niece, (the prisoner) and that the petitioner's statement should be taken in the usual way.

The darogah on the 8th of April made a return that the woman was not to be found.

On the 21st of the same month the prisoner appeared voluntarily in the magistrate's court, and presented a petition to the effect that the person who called himself Punchanund and stated that he was her uncle, was no relation whatever of her's: that she had been subjected to no confinement, but had been living of her own free-will with the person who was charged with forcibly detaining her, whom she had entered into a written engagement to serve in consideration of the receipt of company's rupees 25. She repeated that Punchanund was no connection of her's, and prayed that his false complaint on her account might be the subject of proper enquiry.

The magistrate immediately and personally took the statement of the prisoner on solemn affirmation. It corresponded in all material points with her petition, and in it she repeated

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that she knew nothing of Punchanund, who bore no relation to her whatever. The result was the present commitment.

The prisoner pleaded not guilty before the sessions court.

It was clearly shown by the witnesses, one of whom is the prisoner's mother and Punchanund's sister, that she is unquestionably Punchanund's niece, and that she actually resided in the same house with him until three years ago when she disappeared. Any plea of loss of memory as to the relationship borne to her by Punchanund is not of the question with reference to her age, which is at least twenty-five years. Had she been a child, it would have been possible, though not likely, that in three years she might have forgotten that Punchanund is her uncle. As a grown up woman when last she saw him, such forgetfulness is of course out of the question.

I have little doubt that the following is the real character of the case. The prisoner appears to have been a servant or *kannuz* of one Bhyrub Moojumdar, and to have run away from her master some three years ago. Whether she has been intermediately entirely with her present master, Raujkishore Chuckerbutty, or whether she entered into his service more recently is not clear. But her former master seems to have ascertained where she was living, and to have induced her uncle to present the petition he did for her recovery. This latter point, I infer from the circumstance, that the two witnesses, in the magistrate's court and in my own, Rammanick and Brojo Chowdree, are relations of Bhyrub Mujoomdar, and have been in constant attendance since the case commenced. When the information reached the prisoner's present master, Raujkishore Chuckerbutty, of the petition presented by Punchanund, I have no doubt that the prisoner was instructed to hasten in, and in her turn to petition the magistrate, denying all knowledge of, or connection with, her uncle, or that she was under the least constraint. This, I have no doubt, is the real state of the case, although not developed by the evidence to the extent precisely of these remarks.

The prisoner's defence was, that during three years no care or solicitude had been shown for her by her uncle, Punchanund, and that therefore she had abjured her connection with him.

The Mahomedan law officer found the prisoner guilty of perjury and liable to *tazeer*.

In this finding I concur. The prisoner not only petitioned the magistrate, protesting that Punchanund was a stranger to her, but desiring that his false complaint on her behalf might be duly enquired into, of course with a view to his being punished. This petition she supported by a statement on solemn affirmation, while both petition and statement have been proved to be, as regards Punchanund's not being her

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uncle, totally false. I have no doubt, however, that she acted under advice and at the instigation of others, and am, on the whole, of opinion that with reference to her sex, position, and the general character of the case, a year's imprisonment with labor adapted to her sex will be sufficient punishment. I have in the meanwhile passed a sentence of three (3) years' imprisonment with fitting labor, which I beg may be mitigated to the extent the Court may think proper.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. R. Colvin.)—The court concur in the view taken of this case by the sessions judge, and sentence the prisoner, Toonee, to imprisonment for one year with labor suited to her sex.

PRESENT:

W. B. JACKSON, ESQ., *Judge.*

SAOBUL SAMUNT AND GOVERNMENT

versus

GORACHAND BAGDI (No. 1), KARTIC HARI (No. 2), SHIBEE BAGDI (No. 3), AND RAMLAUL PAUL (No. 4).

HOOGHLY.

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Case of
GORACHAND
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others

Two prisoners charged with riot attended with homicide convicted of riot attended with wounding and sentenced to seven years' imprisonment. Two other prisoners indicted on the same charge and on other counts, acquitted owing to the discrepancies in the evidence.

CRIME CHARGED.---1st count, Nos. 1 to 4, riot attended with the culpable homicide of Tarachand Samunto; 2nd count, Nos. 1 to 4, riot attended with wounding of witnesses, Nos. 15 to 17, and with taking away property to the amount of Co.'s rupees 981-8; 3rd count, No. 1, with culpable homicide of the prosecutor's son, Tarachand Samunto, and Nos. 2 to 4, with aiding and abetting therein, and 4th count, No. 4, being an accessary before the fact of the *dunga*.

Committing Officer—Mr. G. Bright, joint magistrate of Serampore.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Hooghly, on the 29th March 1853.

Remarks by the officiating additional sessions judge.—The Court will perceive that on the first of the dates mentioned, the only proceeding had on the trial consisted in the return for reconcilement to the joint magistrate of Serampore, the important discordance apparent between the English and Vernacular versions of the calendar submitted by him, the one stating the crime to be affray, the other riot.

The prisoners are arraigned on four distinct counts, and plead not guilty to all.

The occasion out of which this case has arisen is a dispute regarding possession of landed property, and the right to collect the rents, and there appears to have existed much ill-will and angry feeling between the respective claimants, as well as an apprehension of violence on the part of the authorities.

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The facts of the case, as detailed in the evidence, are the following: The prisoner, Ramlaul Paul, No. 4, came to the scene of action with an armed body of between 200 and 250 men for the purpose of realizing the rents by plunder. His adherents had commenced and partially proceeded with the work of pillage; when the son of the prosecutor, Tarachand Samunto by name, remonstrated and demanded their right to adopt the unlawful course they were pursuing. Ramlaul, exasperated at Tarachand's audacity, in attempting to oppose him, ordered him to be cut down, when the prisoner, Gorachand Bagdi, No. 1, felled him with a bill *(kuttan)* and struck him twice with the weapon while lying on the ground. Tarachand's apparently lifeless body was then and there put into a sack of gunny and carried away in a litter; the prisoners, Gorachand aforesaid and Shibee Bagdi, No. 3, assisting in its removal from the premises. An unsuccessfull attempt was made by the assailed party to recover the body in which some of them were wounded, and no trace of the missing Tarachand has since been obtained.

The evidence, touching the above facts, is full and consists of the testimony of six eye-witnesses. It is generally consistent and of a credible character, and there was nothing in the manner in which it was given, to induce a belief of its having been a prepared or tutored detail.

The three next ensuing witnesses for the prosecution are the parties, who received wounds on the occasion, and their evidence, generally, corroborates the statements relative to the outrage made by the foregoing deponents. It moreover implicates in a measure the prisoners, Kartick Hari, No. 2, and Shibee Bagdi, No. 3, as the inflicters of the wounds, and the prisoner, Ramlaul, as the principal at whose bidding they were inflicted.

It is necessary before I quit the subject of the evidence enumerated, to notice the testimony of two of the deponents, namely, Bhujuhuri Bhuian and Sreemunt Jana. The former minutely and circumstantially detailed the murderous assault committed on the prosecutor's son at the instance of the prisoner, Ramlaul, but declared it to have been perpetrated by Tara Bagdi, the brother of the prisoner, Gora Bagdi. But I must do him the justice to state that the misnomer appeared to me to be the result of pure inadvertence, as when his deposition was read over to him after it was completed, he disclaimed in the most positive terms that he had named Tara, and distinctly and repeatedly averred that it was his brother, Gora, who had done the deed. And it is difficult to believe, with reference to the testimony of the latter, that he should have had a fowling piece discharged close to his face, and

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received no further injury than the penetration of one or two pellets in the lower jaw.

The evidence of the civil surgeon shows, that four of the deposing parties were admitted into hospital and treated for slight wounds. The fragment of a bone was discovered near the spot where the prosecutor's son had been cut down, but Mr. Sheridon is unable to say, whether or not it belonged to a human subject, and thinks that it could not have been separated from the shaft by a blow with a sharp instrument, though it might have been removed subsequently by the hand, as in the former case a portion of the *periosteum* would infallibly have adhered to it.

I now come to the most remarkable part of the whole evidence in the case, but the testimony stands alone and the improbability of the disclosures it makes, disentitles it to belief the more on that account. I thought it my duty, however, to carry on the inquiry in the direction it indicated in the hope of obtaining some corroborative clue to the extraordinary facts it brings to light, and, with that view, postponed the trial from 14th to 28th instant, as per proceedings of this court bearing the former date; but my endeavours have proved fruitless and the unsupported evidence of Jadubchunder Dutt is all of testimony that the record offers, relative to the strange proceedings. It speaks for itself and in substance runs thus:

He says he was returning home after a visit to the Rajbulhat police thannah, when he saw about thirty clubmen, retainers of the prisoner, Ramlaul, collected near the river, headed by Torni Ghose and Goburdhun Paul. These two required him to attend a summons from the Pauls, but he refused, when about 3 P. M. on the same day his bearers were beaten and he carried *nolens volens* in his own palanquin to the house of one Jugissur Sirkar and kept prisoner there. At about 6 P. M., on 31st Bhadon, one Tinkowree Bog came to the said Jugissur Sirkar, and throwing down before him a trunkless human head said to him in his (deponent's) presence "you ordered us to bring you the head of Muddun Samunto, but we could not effect this and have brought you the head of his son," on which Jugissur Sirkar gave him a reward of five rupees. Deponent adds, that he saw the head and recognized it as that of Tarachand Samunto and not Mudun Samunto's son.

The only remaining evidence for the prosecution is the testimony of a police burkundauze, who appears to have been resisted in his endeavours to restrain the rioters in their progress to the village, assaulted and deprived of his badge, and the witnesses, who attest the confession of the prisoner, Kartick Hari, No. 2, before the police and joint magistrate.

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All the prisoners deny the charge and plead *alibi*, citing witnesses in proof of plea, with exception to the prisoner, Kartik Hari, who names no witnesses to his defence. The prisoner, Ramlaul Paul's defence is that he was in Hooghly at the collector's office, on 31st Bhadon, the day of the occurrence, and there filed a power of attorney (mookhtearnamah) authorizing Kashinath Miter and Kalachand Banerjea to institute summary suits for rent against certain defaulting tenants.

Three witnesses were examined on behalf of the prisoner, Gorachand Bagdi, and two on the part of the prisoner, Shibee Bagdi, but their testimony is utterly insufficient to sustain the plea, which to be available for the purposes of acquittal must be indisputably and unexceptionably supported.

The defence of the prisoner, Ramlaul Paul, is supported by the evidence of 13 persons, but their joint testimony fails to convince me of the prisoner's innocence. The first witness, and perhaps the most material, Kashinath Mitter, is a regular attestor of confessions before the criminal courts, and in no wise better than a witness by profession, and the second, Mudun Dass, is a person of the same description, and by his own admission in the constant habit of giving testimony in matters connected with legal deeds and documents. The next three persons who speak to the *alibi* are creatures of the prisoner and ready at his bid and beck to swear to any thing, and others specify the date in question without possessing the most remote knowledge of the dates and events of the passing moment. Kalachand Banerjea, the co-attorney with Kashinath Mitter in the alleged summary suit for rent, asserts that he recorded his consent to act in the matter, on the 30th Bhadon, whereas the endorsement apparent on the original power of attorney shows that he did so on the 31st, and his version of the progress and issue of the suits so said to be instituted, differs from that given by Kashinath, which circumstance naturally creates a doubt as to the reality of the alleged proceedings.

Independent of these considerations the date of the mookhtearnamah has been evidently altered, (probably with the view to mislead) and the figures as they now stand may be taken either from 30th or 31st, but the English date, which to me has all the appearance of being written in another hand, corresponds with the former, and if this be correct the *alibi* pleaded is not made good. Again, there is no record on the deed itself to show that it was presented on the 31st by the prisoner in person, so far from it, the inference is that he was not present, as the witnesses attesting the mookhtearnamah before the collector are said to have verified the signature of the person executing the deed, which was a most unnecessary

proceeding had the party himself been in attendance to speak to the fact. And again, it is very strange that the prisoner has failed to name a single Government officer, to prove his presence during two consecutive days at a public establishment like that of a collector's kutcherry. These and other reasons, which will appear on reference to the cross-examination of the witnesses for the defence on the record of the trial, induce me to reject the evidence brought by the prisoner, Ramlaul, in proof of his exemption from guilt.

The *futwa* of the law officer convicts all the prisoners of the charge brought against them as exhibited in the several counts set forth in the calendar, with exception to that portion of the 2nd count, which defines or specifies the amount of the property plundered, and declares them liable to discretionary punishment, the prisoner, Gorachand Bagdi, by *deeut*, the prisoner, Ramlaul Paul, by *acoobut*, and the prisoners, Kartick Hari and Shibee Bagdi, by *tazeer*,

I concur in the finding with exception to that relative to the 4th count, from which I dissent, being of opinion that no evidence has been offered in the trial to show that the prisoner, Ramlaul Paul, was an accessary before the fact.

Regarding the sentence I am empowered by the law to pass on the prisoner Gorachand Bagdi, inadequate to his guilt, which, as displayed by the evidence, amounts to the highest order of culpable homicide closely bordering on wilful murder, I refer the trial for the orders of the Nizamut Adawlut, under the provisions of Act XXXI. of 1841, Section VI., and recommend that he be imprisoned with labor in irons for the period of 14 years.

As regards the other prisoners, I am of opinion, that a sentence of seven (7) years' imprisonment each, with labor in irons, except in the case of the prisoner, Ramlaul Paul, whom I would exempt from the additional penalty of labor and fetters, in consideration of his position in life, would prove a punishment commensurate with their crime, and respectfully suggest the imposition of the same for the consideration of the superior court.

Remarks by the Nizamut Adawlut.—(Present: Mr. W. B. Jackson.)—The first thing that struck me in reading the judge's report in this case is, that the charge ought to have been murder, not culpable homicide. The facts stated are that the prisoners attacked the house of prosecutor and plundered it without provocation; that on the prosecutor's son remonstrating, Ramlaul ordered him to be cut down, and he was cut down immediately by the prisoner, Gora, who followed up his blow with two others which killed him, and the body was carried away in a sack.

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But when I examine the main evidence to the prosecution, I find that it is given in a most suspicious manner, and the witnesses to the fact of the murder all seem to break down in cross-examination; many of them make different and contradictory statements in the magistrate's and in the sessions courts, and when these are pointed out to them, say "I forgot." "I did not think of it." I reject the whole of the evidence to the murder, upon which there is the additional suspicious circumstance that the body is not produced. The evidence to the manner in which the body was disposed of, is also unsatisfactory. It seems strange that the prosecutor should not have followed to see what they did with his son's body, having seen him killed with his own eyes; but it is strange still that he should make a mistake as to the perpetrators of such a crime. In one place he says, Gora did it, and in another, that Tara and Gora did it. Another witness gives his evidence throughout, mentioning Tara as the person, but on being questioned again, says it was Gora and not Tara. Even if this were mere carelessness, it would be sufficient reason for rejecting the evidence; but in my opinion the truth is, that the evidence is got up, and the witnesses are saying a lesson they have been taught, and saying it badly.

However, I have no doubt that a riot took place and the evidence of the wounded men is entitled to some credit.

Ramjye witness says, he was wounded by Shibee, prisoner, who was also recognized by Goomanee, burkundauze; and Kartick, prisoner, confesses being present with the party who plundered the prosecutor's house and wounded some men: he even confesses to having seen them commit the murder; but I do not believe this occurred even on his confession.

I therefore convict the prisoners Shibee and Kartick of riot attended with wounding, and sentence them to seven (7) years' imprisonment with labour and irons.

I acquit Ramlaul Paul and Gorachand, the particulars alleged against them not being substantiated by any credible evidence.

PRESENT:
SIR R. BARLOW, BART., AND J. DUNBAR, ESQ., } *Judges.*

MOHUN DAS AND GOVERNMENT

versus

CHYTUN DAS.

CUTTACK.

1853.

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Case of
CHYTUN
DAS.

The prisoner was convicted of wilful murder, and there being no extenuating circumstance, he was sentenced to suffer death.

CRIME CHARGED.---Wilful murder of Bunmallee Das, son of Mohun Das, prosecutor.

Committing Officer---Mr. E. Drummond, magistrate of Pooree, Zillah Cuttack.

Tried before Mr. M. S. Gilmore, sessions judge of Cuttack, on the 1st April 1853.

Remarks by the sessions judge.---The particulars attending this case are briefly told.

At about 9 A. M. on Wednesday, the 28th February last, on altercation took place between Chytun Das, the prisoner, and Bunmallee Das, the deceased, who were both employed as waiting men at the Radhabullub *muth*, in the town of Pooree, in consequence of the former having, when cooking, made use of some wood procured by the deceased, and that it was put a stop to by the *adheekarry* or head of the *muth*, Nulita Das. But at about 1 P. M. the same day, while the said Nulita Das was engaged at play with witnesses, Nos. 5, 8 and 9, in a compartment adjoining that in which the prisoner and the deceased were, witness, No. 5, heard a noise as of a blow in the direction where Chytun Das and Bunmallee Das were, and on going to ascertain the cause, he saw the latter lying senseless on the ground and the prisoner absconding from the *muth*. And the axe with which the blow was inflicted was lying near the deceased.

Information was then communicated to the police and Bunmallee Das conveyed to the station hospital, where he lingered on till the 7th of March and then expired, without having evinced any signs of sensibility from the time he received the blow.

Search was made for the prisoner immediately after the occurrence, but he eluded apprehension till the 9th of March; and on being taken before the police on the 11th idem, he confessed and stated, that while yet in a state of excitement or passion in consequence of the quarrel he had had in the morning with the deceased, at about noon, when the deceased was asleep, he fetched an axe from an adjoining room and struck him a blow with it on the head, and was about to strike him a second one, with the intent to kill him, when he saw Juggoo

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Das, witness No. 5 approaching and absconded. And he repeated the above confession before the magistrate, and stated in a more definite manner than he had done in the mofussil, that he intended to kill the deceased.

Before this court the prisoner first stated, that in consequence of the deceased having beat him, he threw the axe at him and absconded; and when asked at the close of the trial if he had any thing to urge in his defence, he denied killing the deceased and said, he absconded because the manager of the *muth* beat him.

The *futwa* of the law officer convicts the prisoner Chytun Das on his own confessions of the wilful murder of Bunmallee Das, and in the said conviction I fully concur; and seeing no extenuating circumstances why the prisoner should not suffer the full penalty of the law, I recommend that sentence of death be passed on him.

Remarks by the Nizamut Adawlut.---(Present: Sir R. Barlow, Bart., and Mr. J. Dunbar.)

MR. J. DUNBAR.---The guilt of the prisoner is fully established, he admitted that the crime was premeditated, that he fetched the axe for the purpose, and that he struck the fatal blow, when his victim was asleep. I would pass sentence of death on the prisoner.

SIR R. BARLOW.---The prisoner and the deceased had a squabble early in the morning; about 10 o'clock of the same day, the prisoner murdered the deceased when he was asleep, by inflicting on his head a blow with an axe, which fractured the skull, and was, as stated by the medical officer, the cause of death, some eight or nine days subsequently. The deceased was unable to speak from the moment he received the blow. The prisoner confessed in the mofussil and before the magistrate, that on seeing the deceased asleep, he went to the *muth*, and brought away the axe, and alone with the back of it, gave deceased a blow; raised the axe to inflict another, when Juggoo and Nulita came and saw; threw the axe down, and ran away to Parbutteepore, and concealed himself there, that night, then went to his gooroo at Madpore, whence he was brought by Hurree Sahoo and others; made over to the adheekarry of the *muth*, Nulita Dass, and lodged in the thannah. The prisoner on being first asked, said he did not inflict the blow with intent to kill, he did it in anger; but I see nothing in the case which would justify the finding a verdict of guilty of any crime less than wilful murder on the prisoner's own foujdaree admissions subsequently made. I concur in a capital sentence upon the prisoner.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

MUDAREE.

SARUN.

1853.

May 7.

Case of MUDAREE.

The prisoner, who was charged with perjury, was acquitted on the ground, 1st that there was strong reason to presume that he had not been properly sworn previous to making the deposition, in which the perjury was assigned, and 2ndly, that the charge was contrary to the record.

CRIME CHARGED.—Perjury.

Committing Officer—Mr. J. F. Lynch, deputy magistrate of Sewan, Zillah Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 21st April 1853.

Remarks by the sessions judge.—I refer this case in consequence of my dissent with the "*futwa*," which convicts the prisoner of perjury, whereas, I do not consider that the crime established against him amounts at the utmost to more than prevarication, and that too on a point which can hardly be considered as material to the issue of the case.

It appears that the prisoner was a witness on the part of the prosecution against a woman, named Kabootree, (his half-sister) who was accused of abandoning her infant child, and that on the 4th February, when first examined, he told nothing but the truth, and stated both that his father's name was Chundoo, and that he had heard that the woman had thrown away the child. The following day (the 5th) when cross-examined, he stated that he knew nothing of the prisoner, and that his father's name was Dilshere Khan, but he never altered (indeed he was not further questioned on the point) the statement he had made of his having heard that she had abandoned the infant, and this was the point upon which his evidence was wanted.

The magistrate himself admits that his denial of relationship with the woman was made merely to prevent his being too closely questioned on the subject, and though it is clear that he told falsehoods in stating that his father's name was Dilshere Khan and that he knew nothing of Kobootree, I do not think that he was actuated by any evil intent in making these statements, and consider it more than probable that he got frightened, and hardly knew what he was saying when he made them, and at any rate cannot be held to have intentionally and deliberately given false evidence on a point material to the issue of the case.

The moulvee, however, convicts; and it is, therefore, necessary to refer the case for the orders of the Court, and I accordingly forward the proceedings, and recommend, in the event of their concurring with me, that the prisoner be acquitted and released.

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Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The commitment in this case has been made without sufficient consideration.

First,—There is strong reason to think that the deposition of the 5th February, upon which the perjury has been assigned, was taken without oath or solemn declaration—there is no heading, as is usual, recording the fact that the deponent had been sworn, and the words to that effect in question seven, have clearly been interpolated, with a view to cure the defect.

Secondly,—That part of the charge which refers to the prisoner's having stated in the said deposition, that his father's name was Dilshere Khan, falls to the ground as contrary to the record—on being asked, (question six) why he had first called his father Chundoo, and then Dilshere Khan, he distinctly and unequivocally abandoned the latter, and said his father's name was Chand Khan, or Chundoo.

On these grounds, the prisoner is entitled to his acquittal; and I may further remark, that I concur with the sessions judge, in thinking that he was not actuated by any evil intent, in making the statements which he did. His evidence such as it was, did not make either for or against the prosecution, in the case in which he had been summoned as a witness. From his answer, taken on the 17th February, it would appear, that he was reluctant to acknowledge any relationship with the woman Kabootree, as being the child of a woman kept by his father, after his own mother's death.

The court direct that the prisoner be immediately discharged.

PRESENT:

J. R. COLVIN, ESQ, *Judge.*

GOVERNMENT AND GOOROO CHURN DUTT, ON THE PART OF SEEBO SOONDUREE DEBEEA

versus

GOBIND CHUNDER SIRKAR AND CHUNDEE CHURN SIRKAR (NOS. 3 AND 4), OF THE CALENDAR OF PRISONERS FOR DECEMBER 1852, SHEIKH HOSSAINOODEEN (No. 2), SHEIKH JEETOO (No. 3), SHEIKH SUMEEROODEEN (No. 4), ERNUH BURKUNDAUZ (No. 5), SHEIKH GORAI (No. 6), SUMEEROODEEN FUKEER (No. 7), SHEIKH NAZIM (No. 8), SHEIKH SUREETOOLLAH (No. 9), OF THE CALENDAR OF PRISONERS FOR OCTOBER 1852, AKIL MAHOMED (No. 5), OF THE CALENDAR OF PRISONERS FOR DECEMBER 1852, HARAN MANJEE (No. 10), KOORAN MANJEE (No. 11), BERJO MANJEE (No. 12), PERLAD MANJEE (No. 13), AND GOUREE KANT GHOSE (No. 14), OF THE CALENDAR OF PRISONERS FOR OCTOBER 1852.

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Case of GOBIND CHUNDER SIRKAR and others.

Sentence passed by the sessions judge held to be too lenient, but conviction upheld on fifteen out of sixteen prisoners convicted of attacking the prosecutor's boat and carrying off him and other parties, and keeping them in durance, and making away with the boat.

CRIME CHARGED.—Prisoners Nos. 3 and 4, of the calendar of prisoners for December 1852, prisoners Nos. 2 to 9, of the Calendar of prisoners for October 1852, and prisoner No. 5, of the Calendar of prisoners for December 1852. 1st count, assembling in an armed body and committing a dacoity on a boat on the river, and plundering therefrom property to the amount value of rupees 3,104-6; 2nd count, atttacking the boat and plundering property to the amount of rupees 3,104-6, and seizing and carrying off Gooroo Churn Dutt, prosecutor and other churundars, mullahs and manjee of the boat; 3rd count, detaining in close confinement at different places the said Gooroo Churn Dutt, prosecutor, and other churundars as also the mullahs and manjee, and subjecting them to severe discomfort and hardship and concealment of the boat, and 4th count, being accomplices in the said 1st, 2nd and 3rd counts. Prisoners Nos. 10, 11, 12, 13 and 14, of the calendar of prisoners for October 1852, 1st count, being accessaries to the said 1st, 2nd and 3rd counts after the fact, and 2nd count, being privy to the same.

CRIME ESTABLISHED.—Prisoner No. 3, of the calendar of prisoners for December 1852, and prisoners Nos. 2, 3, 4, 5, 6, 7, 8 and 9, of the calendar of prisoners for October 1852, and prisoner No. 5, of the calendar of prisoners for December 1852, attacking the prosecutor's employer's boat, carrying off prosecutor and others who were on board and keeping them in durance, and making away with the same boat. Prisoner No.

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4, of the calendar of prisoners for December 1852. Ordering and being an accomplice in the attacking prosecutor's employer's boat, in the carrying off prosecutor and others who were on board and keeping them in durance, and in making away with the same boat. Prisoners Nos. 10, 11, 12, 13 and 14, of the calendar of prisoners for October 1852. Privity to attacking the prosecutor's employer's boat, carrying off prosecutor and others who were on board and keeping them in durance, and making away with the same boat.

Committing Officer—Mr. C. Mackay, principal sudder ameen of Furreedpore, exercising powers of a magistrate.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 16th February 1853.

Remarks by the sessions judge.—A dispute appears to have existed for some time past between Mr. H. G. French of the Meergunge concern, and Geereeschunder Chowdry, deceased, regarding the Luckeepore indigo factory. The matter eventually came under Act IV. of 1840, and possession of the said factory was awarded to the Chowdry. This alone seems to have been the origin of the outrages of which the following are the circumstances: On the 8th Magh 1258 B. S., corresponding with the 20th January 1852, the prosecutor (who is a servant of the widow of the said Geereeschunder Chowdry) Kisto Chunder Mookerjee, Bawel Chunder Roy, Surroop Chunder Mookerjee and Ramtunnoo Doss set out from Seyudpore in a hired boat laden with indigo, sugar and other property of his employers, to the amount value of Rs. 3,104-6, which he was to take to Calcutta for sale. On the following day, as they were passing Mr. French's Kasseeanee indigo factory, they were hailed by a number of persons standing at the factory ghaut to bring the boat to the shore, which they refused to do. On receiving this refusal the prisoners Nos. 2 to 9, inclusive of the October calendar, and Nos. 3 and 5, of the December one, and other armed men, by order of the prisoner, Chundee Churn, pushed off in another boat, attacked and assaulted the manjee and mullahs, pulled down the sail, and brought the boat to the factory ghaut, when the prosecutor and his companions above named and the manjee and boatmen, in all ten persons, were forcibly taken from the boat and locked up in factory godown. During the night they were all, with the exception of Bawel Chunder Roy, removed to another factory, called Chur Narandee. From this factory the prosecutor effected his escape. The remaining eight persons, as well as Bawel Chunder Roy, who was detained at Kasseeanee, were afterwards taken to Meergunge factory, where Mr. French himself resides. The prisoners, Nos. 10, 11, 12 and 13, obtained their release a few days after, by the intervention of the

prisoner, No. 14, who is the gomastah of the party from whom prosecutor's boat was hired, and whose ryots they are. There remained under detention at the factory five persons, *viz.*, Kisto Chunder Mookerjee, Surroop Chunder Mookerjee, Bawel Chunder Roy, Ramtunnoo Doss and Sumbhoonath, one of the boatmen, who not being a ryot of the proprietor of the boat was not released as the others were. Of these Bawel Chunder managed to escape after twelve or thirteen days' confinement, and the other four were detained upwards of three months, when they were found at a Kalibarree by the police, having been intermediately moved about from one place to another, to evade the police who were in search of them. The prosecutor further states, that the boat was plundered of the property, and sunk in the Baleshur river, and that the prisoner Goureekant Ghose received compensation for it from Mr. French. The attack on, and seizure of the boat, and the persons on board is fully established by the evidence. In support of the charge of detention there are the statements of the parties detained, and the fact of the police darogah having found, in confirmation of prosecutor's statement, his name scratched on the floor of the Kasseeanee and Chur Narundee factories, and that of the witness, Kisto Chunder Mookerjee, on the floor of the latter factory. This circumstance is also proved by the evidence of the witnesses, Nos. 24, 25 and 26, who accompanied the darogah into the godowns when investigating the above point. There is no proof of what subsequently became of the boat and property on board, but it is shewn by the evidence that Goureekant, the prisoner No. 14, received compensation for the boat, and that he procured the release of all the boat people from the Meergunge factory. The inference to be drawn is, that the boat was destroyed as alleged. The prisoner, Sheikh Hossainooddeen (No. 2,) confessed both before the police and the foujdary court, and these confessions have been duly attested. The prisoners deny the charge and have given various defences and called witnesses in support of them, but their evidence is not trustworthy, and cannot be held to exculpate them. The *alibis* set up by Chundee Churn and Govind Chunder are positively deposed to by their witnesses, but, as opposed to the direct evidence against them, cannot be credited. Aftaboodeen, one of the witnesses examined in behalf of Govind Chunder states, that he went to Calcutta *for the purpose* of taking the settlement of lands, while he himself pleads, that while he was in Calcutta he heard that some lands near his home were offered for settlement, and that he presented a petition to be allowed to engage for them, on the 9th of Magh (the day of the occurrence.) A copy of this petition has been filed, but I do not hold it to

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be any proof of the *prisoner's presence* in Calcutta. The *alibi* pleaded by the prisoner, Chundee Churn, is as far as the statements of his witnesses go, strongly supported, but I cannot, in the face of the positive evidence against him, place any reliance therein, and more especially as one of the witnesses (No. 42, who is a dependant of Mr. French's) to the defence of the prisoner, Akil Mahomed Sirdar, states, (in ignorance, I presume of the plea set forth by Chundee Churn) that he saw Chundee Churn at the Bhatyaparah factory on the day of the occurrence. The pleas of *alibi* advanced by the prisoners Nos. 10, 11, 12 and 13 (the manjee and mullahs) are entirely unsupported, the evidence having completely broken down. No. 14 has likewise set up an *alibi*, but I place no belief in the evidence adduced in support of it. The *futwa* of the law officer convicts the prisoners Nos. 2, 3, 4, 5, 6, 7, 8 and 9, of calendar for October and Nos. 3 and 5, of the December calendar, of attacking prosecutor's employer's boat, of carrying off prosecutor and others who were on board and keeping them in durance, and of making away with the said boat. It convicts the prisoners Chundee Churn of ordering and being an accomplice in the above offences. It convicts the prisoners 10, 11, 12, 13 and 14 with privity. In this finding I concur and have sentenced the prisoners as described in column 12 of this statement. I consider it my duty to notice the great delay that has occurred in completing the investigation of this case, and bringing it before the sessions court for trial, one of the prisoners, Sheikh Hossainooddeen, has been under trial in jail twelve months and the prisoners Nos. 10, 11, 12 and 13, a few days short of eleven months.

Sentence passed by the lower court.—Prisoners Nos. 3 and 4, of the calendar of prisoners for December 1852, to be imprisoned without irons for a period of four (4) years each from this date, and to pay a fine of two hundred (200) rupees each on or before the 16th March 1853, or in default of payment to labor until the fine be paid or the term of sentence expire. Nos. 2, 3, 4, 5, 6, 7, 8 and 9, of the calendar for October 1852, and No. 5, of the calendar for December 1852, to be imprisoned without irons for a period of three (3) years each from this date, and to pay a fine of twenty-five (25) rupees each on or before the 16th day of March 1853, or in default of payment to labor until the fine be paid or the term of sentence expire. Nos. 10, 11, 12 and 13, of the calendar for October 1852, to be imprisoned without irons for a period of six (6) months each from this date, and to pay a fine of ten (10) rupees each on or before the 16th March 1853, or in default of payment to labor until the fine be paid or the term of sentence expire. No. 14, to be imprisoned without irons for a period of six (6)

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months from this date, and to pay a fine of fifty (50) rupees on or before the 16th day of March 1853, or in default of payment to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoners have all appealed, excepting No. 14, Gouree Kant Ghose. The evidence appears to me trustworthy and convincing except as to the prisoner No. 4, Chundee Churn Sircar. This prisoner was not mentioned in the first petition of the prosecutor to the magistrate, of 26th January 1852, or in his deposition to the darogah of the 29th January, or in his deposition to the magistrate of March 22nd. Neither was he mentioned in the deposition made on the 7th February before the magistrate by Bawul Chunder, the second of the detained parties who effected his escape. He was included as among the instigators in the mofussil confession made on the 8th February by the prisoner, Sheikh Hoosainooddeen; but this statement is not evidence, and little reliance can be placed on the statements of the four persons, afterwards brought forward as having been standing on the bank and as having witnessed the outrage, who named the prisoner, Chundee Churn, in depositions before the darogah on the 5th March. For these reasons, I acquit Chundee Churn Sircar while I reject the appeals of the other prisoners.

I have already said, in remarks recorded on revision of the monthly statement that, in my opinion, such openly lawless violence, and long continued illegal duress, would have called for a heavier scale of sentences. The perusal of the record has strengthened that opinion.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT AND MUSSAMUT KOORBANI

versus

ADOO (No. 4), ARADHUN (No. 5), AND MUSSAMUT GOURMONEE PESHAGUR, (No. 6, APPELLANT.)

BACKERGUNGE.

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Case of MUSSAMUT GOURMONEE PESHAGUR, and others.

Three prisoners, convicted respectively of their different parts in a transaction amounting to the sale of a girl to a prostitute, and of purchasing her for the purpose of making her a prostitute, sentenced to five years' imprisonment. Conviction and sentence upheld in appeal.

CRIME CHARGED.—No. 4, selling Musst. Suffer Jan to a prostitute, No. 5, being an accessary before the fact in the above crime, and No. 6, purchasing Musst. Suffer Jan for the purpose of making her a prostitute.

CRIME ESTABLISHED.—On No. 4, selling Musst. Suffer Jan to a prostitute. No. 5, being an accessary before the fact, and No. 6, purchasing Musst. Suffer Jan for the purpose of making her a prostitute.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 4th March 1853.

Remarks by the sessions judge.—It is in evidence that Musst. Suffer Jan, a delicate looking thing of 9 years of age, was married in Kartick last to the prisoner, No. 5, Aradhun; Adoo being, as it were, his best man on the occasion. The ceremony over, we have Musst. Suffer Jan's evidence alone to rely upon, corroborated in all essential points by the prisoners themselves, as to what took place afterwards. She relates that she was taken straight to Adoo's house, who on the day following the marriage, took her to the house of a person, who by his position ought to be one of respectability, residing in the same village, namely, to the house of the nazir of the sudder ameen of Dacca. The mans name is Rujjub Ally, and Suffer Jan's husband accompanied her. Having been kept four days in the house of Rujjub Ally, she fell ill, when Adoo and his mother, Tandab, took her to their house where she remained in a sick state nearly two months, at the expiration of which time, Adoo and Aradhun sold her under the name of Mina to the female prisoner, Gourmonee, a prostitute by profession, for 18 rupees.

Ram Needhee Sirkar, witness, No. 2, met the prisoners, Adoo and Gourmonee, with Suffer Jan, near the village of Gopalpore, where the two male prisoners reside; Gourmonee then informed him that she had purchased the child, Mina from Adoo, for 18 rupees. Another witness, No. 7, Sullim, met the prisoners, Adoo and Gourmonee, with the girl, shortly after the above witness, at the skirt of the village of Gopalpore.

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The prisoners made a confession at the thannah, but as they also did the same to nearly the same effect before the sessions, it is not necessary to record the substance of their mofussil confessions.

A number of witnesses proved the marriage of Suffer Jan to Aradhun, and the thannah confessions of the prisoners were also proved by the attesting witnesses.

The prisoner Aradhun, at the sessions, says that he got fifteen rupees from Rujjub Ally to get a wife with, the money being paid to him on Adoo's security. That immediately after his marriage with Suffer Jan, he fell ill and became senseless. That Adoo seeing this and suspecting that Aradhun would die and that he should loose fifteen rupees, carried off Suffer Jan and gave her to Rujjub Ally as a domestic servant, but that she almost directly fell ill and Rujjub Ally would not keep her. Thereupon Adoo sold her to the female prisoner, Gourmonee.

Adoo's statement is that Rujjub Ally gave Aradhun on Adoo's security fifteen rupees to procure a female slave; that he did not approve of Suffer Jan, who was moreover sick; that Adoo then took her to his own house, but Rujjub Ally threatening, that if some better person than Suffer Jan, was not soon procured he would disgrace Adoo's female relatives, the latter after consultation with Ram Nidhee sold the girl for eighteen rupees to Gourmonee; that he paid fifteen rupees of it to Rujjub Ally's mother and three rupees to Ram Nidhee. This prisoner named witnesses in his defence before the magistrate, but he did not desire to have them examined at the sessions.

Gourmonee, who admitted the purchase of the girl at the thannah, pleads at the sessions that some conversation had passed about buying the child, but that she did not actually buy her before the affair came to light.

Such are the facts as they appear in the record. The real truth, without any doubt, seems to be that Aradhun's marriage with Suffer Jan was a mere device to obtain a decent girl for Rujjub Ally. The marriage was no sooner over, than Aradhun accompanied by Adoo, delivered the girl to Rujjub Ally, who not being satisfied with her, or because she became very ill, returned her to Adoo. So little was she regarded as the wife of Aradhun that she lived with Adoo, near two months, when being somewhat restored to bodily health, she is sold (a fitting climax to such a dark history) for eighteen rupees to a prostitute.

The *futwah* of the law officer convicted the prisoners of the charges severally preferred against them in the calendar, and declared the simple sale of a wife was not regarded as an offence

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yet the law did not allow of a sale to a prostitute which was an offence punishable at discretion.

I agree with the futwah that the charge is proved against each prisoner, as laid in the calendar. I cannot see any comparative degrees of guilt between the prisoners. They are all equally criminally concerned in the sale of a helpless little girl into a slavery of the most infamous and demoralizing kind. Under this view the same sentence was passed upon all three prisoners.

Sentence passed by the lower court.—Nos. 4 and 5, each to be imprisoned for five (5) years, with labor and irons, and No. 6, to be imprisoned for five (5) years, with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoner, No. 6, Musst. Gourmonee Peshagur has appealed, repeating her statement on the trial that she had not purchased the girl, but had only entered into a bargain for the purpose, on the condition of a previous sanction from the police. This statement is however entirely unsupported, and it is shown that the girl was found with the prisoner as having been already sold to her.

I confirm the conviction and sentence.

PRESENT:

J. DUNBAR, ESQ., *Judge*.

GOVERNMENT PLEADER

versus

GOORDIAL RAI (No. 16), PIRTEE RAI (No. 17), AJRAWUL RAI (No. 18), MANOHUR (No. 19), TOOFANI (No. 20), GUJA (No. 21), SUMEERAN (No. 22), RAMPUT (No. 23), GUNA (No. 24), NUNDOO (No. 25), JUG (No. 26), AND JEWA (No. 27.)

SARUN. 1853. May 10. Case of GOORDIAL RAI and others. The prisoners convicted of affray with culpable homicide. Sentence of the sessions judge confirmed.

CRIME CHARGED.—Affray attended with the culpable homicide of Teluk Dhanook and wounding of Goordial Hurruck and Tofanee.

CRIME ESTABLISHED.—Affray attended with the culpable homicide of Teluk Dhanook and wounding of Goordial Hurruck and Toofanee.

Committing Officer—Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 5th January 1853.

Remarks by the sessions judge.—The affray charged against the prisoners here named, was perfectly unpremeditated and arose from a quarrel which took place between Jewa and the deceased, Teluk Dhanook, about some cattle trespassing, when

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both parties being joined by others of their friends and neighbours from their different villages (Hurkeshpore and Jhiyowah, Pergunnah Baol) a fight took place in which three or four different persons were wounded, of whom two died in hospital, one from disease, *caused by his wound* and the other from illness, quite unconnected with it. All the prisoners deny their guilt and plead that they had nothing to do with the affray but the case is clear against them all, though I do not consider it a very aggravated one.

The moulvee convicts the whole of the prisoners and holds them liable by "*tazeer*," and in this finding, as I concur with him, I have sentenced them as noted apportioning the punishment awarded to each person, according to my opinion, of the more or less active share taken by him in the fight.

Sentence passed by the lower court.—Nos. 16, 17, 20 and 27, each to be imprisoned without irons for a period of three (3) years from 5th January 1853, and each to pay a fine of fifty (50) rupees, on or before the 4th February 1853, or in default of payment to labour until the fine be paid or the term of their sentence expire. Nos. 18, 19, 21, 22, 23, 24, 25 and 26, each to be imprisoned without irons for a period of two (2) years from 5th January 1853, and each to pay a fine of (25) twenty-five rupees, on or before 4th Febuary 1853.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—On perusal of the record the court I see no reason to interfere. The sentence is confirmed.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND NUBOKISHORE SHAH *versus* MAUGNEEAH SHAH (No. 15), AND CHITTRAMONEY HAREEANEE (No. 16).

RUNGPORE.

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Case of MAUGNEEAH SHAH and another.

The prisoners (a woman and a boy) convicted as accomplices in the murder of a boy for the sake of his ornaments. Under the circumstances of the case, the former was sentenced to imprisonment for life, and latter for ten years with labor.

CRIME CHARGED.—1st count, wilful murder of Rajkissore, the son of the prosecutor, and stealing from his person ornaments and clothes valued at Co.'s rupees 35 ; 2nd count, accomplices and aiding and abetting in the commission of the said crime, and 3rd count, privy both before and after the fact to the commission of the said crime.

Committing Officer—Mr. R. H. Russell, officiating joint magistrate of Bograh, Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 15th April 1853.

Remarks by the officiating sessions judge.—The case is simply this: a father sends his child eight years old under charge of an old woman and boy to a relation's house at some distance, and the child is never seen alive again. The old woman returns alone on the day following and tells the father that she had missed the child and boy, and supposing they must have gone on she had returned home. The father alarmed, deputes two men to go to the relation's house and enquire, and on the way they are informed that the boy has arrived there, but not the child, they take the boy back to the father who proceeds to the thannah, and there the boy says the woman murdered the child and took his ornaments, and he points out the body in a ditch with about a *hath* of water in it, stripped, and the greater part of the ornaments gone.

Nubokissore Shah, father of the deceased, states—On Tuesday the 19th of Falgon (March 1st) in the morning I sent my son, Rajkissore, a child of about eight years old with Chittramoney Hareeanee and Maugneeah to Jumalgunge, a distance of six *coss*, to fetch my brother-in-law's wife. On the following day Chittramoney came back alone and said that when she got to Gobur Chappah *haut* she went to ease herself, and that she could not find either Maugneeah or the child afterwards, and that I had better make some enquiries. I replied you took the child, how can I find him; she said he has gone with Maugneeah to Jumalgunge. I therefore sent my servant Joomnah (witness No. 2,) and Soktah Byragee (No. 1,) to make enquiries at Jumalgunge. The same day Uluck Napit (witness No. 3,) and Sobandee (witness No. 4,) came and told me that they had seen Maugneeah naked, except some leaves

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about him, somewhere to the south of Gobur Chappah, and that they took him to his brother-in-law's house and left him there, but that they had not seen Rajkissore. That evening Joomnah and Soktah returned from Jumalgunge with Maugneeah, when I asked him what had become of Rajkissore. He replied that he and the child had sat down beside a tank, while Chittramoney went to the *maidan*, and that suddenly he felt as if every thing was dark around and where Chittramoney and the child were he could not say. I then gave intimation at the thannah upon which the darogah took all parties to the thannah, at first the prisoners said nothing connectedly, but afterwards Maugneeah said that Chittramoney had killed the child and taken his ornaments. The darogah asked him if he could point out the body. He replied that they had put the body in a ditch to the south of Gobur Chappah, and that he would point it out the next day. On going to the spot we found the body in the water; and on the dry ground near some cloth of which two pieces were mine. One Chittramoney claimed and the other *(photah)* belonged to Maugneeah. Upon the child were found two silver bangles and a copper neck ornament; besides which he had two silver anklets and a silver *hunslee*, gold ear-rings and gold armlet, which are not found. Chittramoney said that Maugneeah had killed the child and taken his ornaments. The old woman was always about my house, and the child in the habit of being with her, and she always seemed very fond of him. Maugneeah is of the same *jat* with me, but is no relation of mine.

Witness No. 1, *Soktah Byragee* states,—That one Tuesday in Falgoon, he cannot remember the date, he went to the prosecutor's house early in the morning to smoke, and there he saw the old woman, boy, and the child, preparing to start, and he asked where they were going, and that the prosecutor told him. He noticed all the ornaments enumerated, two gold ear-rings, and an armlet, a silver *hunslee*, two silver anklets, and two silver bangles on the child. The following day the prosecutor called him about 3 o'clock in the afternoon and told him the old woman had returned alone. On enquiry of her, she said that near Gobur Chappah she had gone to the *maidan*, and that when she came back the boy and child were gone, she does not know where; that the prosecutor therefore sent him and Joomnah (witness No. 2,) to Jamalgunge to search, and there we found Maugneeah. Upon the road we met Uluck, (witness No. 3,) who said he had not seen the child. I asked Maugneeah where the child was, he replied he sat down at Gobur Chappah, and that where the old woman and the child were he did not know. The prosecutor went to the thannah and there Maugneeah said Chittramonee had killed the child

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and taken his ornaments. The next day all with the darogah, went to Gobur Chappah *haut*, and then Maugneeah pointed out the corpse in a ditch: it had only on the silver bangles and a copper ornament and a string; the rest of the clothes and ornaments were not there. There were no marks of violence on the body; near the spot, were two pieces of cloth which the prisoners claimed as theirs. The boy reiterated his charge, and the old woman said that Maugneeah had killed the child and taken the ornaments.

Witness No. 2, *Joomnah, servant to the prosecutor*, states,—that one Tuesday in Falgoon, 8 or 10 days of the month remaining; Rajkissore, Chittramonee and Maugneeah, were sent to Jamalgunge. The child, Rajkissore, had on the ornaments described, two silver anklets, two bangles and a *hunslee*, a gold armlet, and two ear-rings. That the following afternoon the old woman, Chittramonee, returned alone, and on enquiry said, that she knew nothing of the boy and child; that near Gobur Chappah she had gone to the *maidan*, and not seen them since. The prosecutor then said "the boy is sharp, and will have gone on to Jamalgunge. Do you go and enquire," that he and Soktah then went, and on the way, met Uluck, (witness No. 3,) and his servant, Sobandee, (witness No. 4,) who in answer to enquiries said that they had not seen Rajkissore but that to the south of Gobur Chappah *haut* they had seen the boy, who was naked and told them that the old woman and child were gone he did not know where, nor did he know where his clothes were, and that he had nothing to eat, that they had fed him and taken him on to Jamalgunge. When they reached Jamalgunge they found Maugneeah there who told them he knew nothing about the child; they took him home that night, when the prosecutor went to the thannah and there the boy said Chittramonee had taken off the child's ornaments, and thrown him into the water, and that he could point out the body, which he did &c., &c., (as described by former witness No. 1); that he was a witness to the mofussil confessions of both prisoners which were voluntary.

Witness No. 3, *Uluck Napit*, states,—one Wednesday morning in Falgoon, he does not know the date. He and his servant (Sobandee, witness No. 4,) were going to Jamalgunge to purchase sugar; that when they came near Gobur Chappah *haut* they saw the prisoner boy naked and looking like a fool; that he asked who he was, and what he did there, to which he gave no answer, the witness therefore desired the boy to come on with him and got him some rice from a *gresht's* house and gave him some cloth, after which he repeated his enquiries, and the boy told him of their setting out together for Jamalgunge and his missing the old woman and child. That he therefore

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took the boy with him to Jamalgunge and left him there. Witness then confirms the statements of witnesses Nos. 1 and 2, as to their meeting and conversation, and tells of the finding of the body, and attending the darogah's *sooruthal* and witnessing the confessions of the prisoners.

Witness No. 4, *Sobandee, the servant of witness No.* 3.—Corroborates Uluck's evidence as far as the going to Jamalgunge to purchase sugar, finding the boy near Gobur Chappah, his state, and their treatment of him, the story he told, and finally their taking him on to Jamalgunge and leaving him there.

Witness No. 5, *Lattoo.*—Witnessed the darogah's *sooruthal* and finding the body.

Witness No. 6, *Achab.*—Witnessed the darogah's *sooruthal* and finding the body.

Witnesses Nos. 1, 2 *and* 3.—Witnesses to the mofussil confessions which were free and uninfluenced.

Witness No. 7, *Mr. Taylor, the apothecary in charge of the jail*, states,—that the body was brought in to him for examination on the 6th of March, and that it was in a far advanced state of decomposition. On dissection he found, "the lungs distended with air, and the blood vessels gorged, and the right side of the heart was full of blood," from which circumstances he deduces "the death to have been a violent one, and caused by suffocation probably;" but the decomposed state of the body prevented certainty. There were no external marks of violence.

Witnesses, Nos. 8, 9 and 10.—Heard both the prisoners make their confessions before the joint magistrate on the 5th of March; they were free and voluntary, and uninfluenced in every way.

Maugneeah stated on the 13th of *Falgoon*,* Nubokissore Shah sent me and a Hareeanee, whose name I do not remember, with his son, Rajkissore, to Jamalgunge to fetch his brother-in-law's wife; we left early in the morning and when we came near a ditch to the south of Gobur Chappah *haut*, the Hareeanee took off her clothes and rolled over in the dust, and then put on her clothes again, she then took off the ornaments, (*viz.*, a silver *hunslee*, golden ear-rings, golden armlet and silver anklets) which were upon the child, and upon his asking her why she did so, she replied "wait and see;" she then took off his clothes and took him into the jungle. Upon my remonstrating, she told me she would kill the child and give me a part of his ornaments, and that we would tell his father we had lost sight of the boy and could not find him, she then took the child who was crying, into the jungle and suffocated him by pressing her

* Evidently a mistake.

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hand upon his mouth and nose and sinking him in the water, she then threw the body into the water and covered it with earth, she then attempted to kill me, but I ran into the cane jungle, and she went away with the ornaments I do not know where to. I remained in the jungle the day and that night, and my clothes were torn being caught with thorns, the next morning I came out having put on some leaves and sat smoking near some labourers in a field, and there came by Uluck Napit who asked me why I was naked, I told him I had lost my clothes; he gave me a *gumcha,* and Sobandee who was with him gave me another. I asked for something to eat and they took me to a tank, and when I had bathed, gave me some rice to eat. I afterwards went to my brother-in-law's house (Bhotanath Shah) at Jamalgunge, and remained there. That night Soktah Byragee and Joomnah came and took me with them to my house at Budulgatchee, and I was afterwards taken to the darogah to whom I told all I have now stated and pointed out the body of the child, I did not want any of the ornaments, but the Hareeanee pursued me to beat me because I said I would tell the father. She used no instrument to kill the boy, but suffocated him with her hands. I made no noise, as she prevented me. The boy was about eight or nine years old. I did not tell any one what had happened. I was standing about thirty feet from the old woman when she sunk the child in the water, he struggled when she suffocated him.

Chittramonee stated before the joint magistrate—On a Tuesday in the month of *Fulgoon*, Nubokissore Shah sent me with his son Rajkissore and Maugneeah Shah to Jamalgunge to fetch his daughter; when we came near Gobur Chappah, I went to a *ghaut* and then Maugneeah Shah suffocated the deceased and took the silver anklets and *hunslee* and golden earrings and an armlet which he wore. I came back to my house and told Nubokissore that Maugneeah has killed your son and gone away I know not where. Nubokissore went to the *thannah,* and the darogah apprehended Maugneeah who pointed out the corpse. This is my reply. I did not kill Rajkissore, Maugneeah took all the ornaments. I did not take any thing. Rajkissore cried out and Maugneeah closed his mouth and strangled him. I was at the distance of about two or two and half cubits. Maugneeah killed the deceased for the sake of his ornaments, Maugneeah has falsely accused me.

Defence.—Before the sessions court the prisoner Maugneeah, a boy of about ten or twelve years of age, persists in his statement that Chittramonee killed the child and carried off the ornaments. And she declares she went to obey the calls of nature, and when she came back Maugneeah and the child were gone. Her statement before the *fouzdarry* is ex-

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tremely improbable. Maugneeah is a weak boy, and not likely to intimidate a woman of her time of life; for although she pleads to 70 years, she does not appear more than 50 or 55; she does not offer any satisfactory reason for not resisting the murder of her charge or not giving the alarm to the neighbours, and I do not see any reason for affording credit to her story before this court, she does not account for her cloth being found at the place of the murder, nor of her proceedings from the time she missed the other prisoner and the child on Tuesday morning until Wednesday afternoon, during which, if she committed the crime alleged, she must have had ample time to conceal or make away with her plunder. I believe the statement of the boy who has been consistent in his account before the darogah, before the joint magistrate and before the court.

The jury convict both prisoners of being accomplices and aiding and abetting, &c. But I differ with them. I see no possible reason for supposing the murder was committed by a third party, but many for believing Chittramonee to have committed an atrocious murder of the child entrusted to her charge, and Maugneeah Shah to have witnessed the murder and not made any effort to prevent it, or have given intimation. I therefore convict Chittramonee on the 1st count and Maugneeah on the 2nd, and not seeing any extenuating circumstances in the woman's case, recommend her for capital punishment; but taking into consideration the tender years of Maugneeah, and all the circumstances, I would recommend him to the mercy of the court for such a period of imprisonment as they may deem sufficient.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—It is impossible to say which of the two prisoners was the most active party in putting the child Rajkissore to death. Each asserts, that he was killed by the other. It is clear from the evidence for the prosecution, and not denied by the prisoners, that the child was entrusted to their joint care. The woman admits in her confession, that she was only about two or two and a half cubits distant when Maugneeah killed the boy, yet she did not attempt to prevent him, although the child cried for help. Maugneeah again confesses that his remonstrances against violence to the child were silenced, by the promise that he should recieve part of the ornaments, and that he saw the murder perpetrated from a distance of ten yards. Judging from all the circumstances of the case, and particularly from the silence maintained by the prisoners, respectively, till they came into the hands of the police, the probability is, that the deed was done by the prisoners jointly, the one assisting the other. Taking the confessions however as the grounds of

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conviction, on these, which are fully verified, I convict the prisoners of being accomplices in the murder.

The woman was, no doubt, from her age, the person mainly responsible for the safety of the child. I sentence her to imprisonment for life in the zillah jail with labor suited to her sex.

In consideration of his youth, and the probability, that he acted under the influence of his older companion, I sentence Maugneeah to be imprisoned for ten years with labor.

PRESENT:

SIR R. BARLOW, BART., JUDGE.

RUTHEKUNTH NAIE AND GOVERNMENT

versus

MYMENSING. — 1853. — May 11. Case of SHOOKEERAM, *alias* SHOOKRAH and others.

Six prisoners, convicted as accomplices in a case of dacoity attended with murder, sentenced to transportation for life.

SHOOKEERAM, ALIAS SHOOKRAH (No. 1), NEELMONEE CHUNG MANJEE (No. 2), HAREEPAH SHEIK (No. 3), ASHKAH FOKEER (No. 4), SEEDAM CHUNG MANJEE (No. 5), BOOLCHAND CHUNG MANJEE (No. 6), SHAM CHUNG MANJEE (No. 7), PUDDO CHUNG MANJEE (No. 8), FELAN CHUNG MANJEE (No. 9), KOMUL MANJEE (No. 10), DOOLAL MANJEE (No. 11), AND SHOONARAM (No. 12).

CRIME CHARGED.—1st count, Nos. 1 to 11, dacoity in the premises of the prosecutor and plundering cash and property valued at rupees 2,553-9¼ annas, in which Gooeeah Sheik was killed, and Kooshul Sheik wounded, and No. 12, accessary after the fact of the above crimes, and 2nd count Nos. 1 to 5, knowingly receiving and possessing property obtained by the above dacoity, and Nos. 6 to 11, accomplices in the above 1st count, and No. 12, privity to the above 1st count.

Committing Officer—Mr. A. Abercrombie, assistant, exercising the powers of joint magistrate at Jumalpore.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensingh, on the 17th March 1853.

Remarks by the officiating sessions judge.—It appears from a proceeding of the magistrate of Rungpore, dated the 30th September last, that certain persons left their houses early in Assin last, from the district of Rungpore in a boat towards the thannah of Dewangunge, expressly for the purpose of committing dacoity. Information of this having been given to the darogah of thannah Bhowaneegunge of that district, he reported the matter to the magistrate, and deputed burkundauzes to arrest them. Shortly after which, he heard that a dacoity occurred at the prosecutor's on the Saturday night following

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that on which, these people left their homes, and that the parties, who were suspected of having been on such an expedition, had returned; and while the darogah was thus employed, the prisoner, No. 12, and a *sonar* were brought to him by a burkundauze on suspicion, who stated that they were proceeding in a boat to warn those parties that the police was in pursuit of them. As these enquiries were going on in the district of Rungpore, the report of this dacoity at the prosecutor's house, on the night of the 4th Assin, (18th September) Saturday, was first made by the chowkeedar to the darogah of thannah Jumalpore, in whose jurisdiction the prosecutor resides.

The prosecutor states that between twelve and two o'clock of the night in question his house was attacked by from twenty to twenty-five dacoits, who were armed with weapons and had lighted torches in their hands. His watchman, Gooeeah Sheik, the deceased, on seeing so much light called out, what was the matter, and was immediately so severely assaulted by the dacoits that he became insensible and died the next day; that he, the prosecutor, on this ran away and the dacoits went inside of the house, broke open three large chests and plundered cash and property consisting of jewels, brass utensils, &c. The prosecutor, on his first deposition being taken by the police, filed a list of the plundered property to the value of Rs. 2,238-13-5, but by a supplementary one he increased it by Rs. 314-12, making the total value of the property plundered to Rs. 2,553-9-5, saying that the destruction of the inner lid of a large chest was not then discovered by him. The prosecutor further states that witness, No. 1, Kooshul Sheik, who was his neighbour, Rughoo Mundul's watchman, was also wounded by the dacoits, whom he met in the way as he was going to see what was the reason of so much noise at the prosecutor's; that the dacoits after plundering his house went off to the westward with their booty, and that he could not recognize any of them as they had disfigured their faces and had cloth tied round their cheeks, but they left a broken *sulfee* and burnt *mushal*.

Witness No. 1, Kooshul Sheik, and the witnesses Nos. 2, 3, 4, and 5, support the prosecutor's account of the affair.

Witness, No. 1, declined to be sent to the station for medical treatment, but the body of Gooeeah Sheik was sent for *post mortem* examination, and the civil surgeon deposes, that his death was caused by several severe injuries, *viz.*, a fracture of the skull, three incised wounds on the head of 1½-2, and 2½, inches in length, respectively, a penetrating one over the right eye entering the socket of the eye, one rib on the right side was fractured and the liver torn. There was also a pene-

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trating wound on the back. That the fracture of the skull must have been produced by a blow with any heavy instrument; the incised wounds must have been caused with some blunt cutting instrument, such as a *dao*, or even by a blunt cutting sword. The penetrating wounds with the extremity of some pointed instrument; that the body was otherwise healthy and that the wounded man could have lived, but a few hours after receiving such injuries.

Prisoner, No. 1, being apprehended, confessed before the police to having committed the dacoity, but denied wounding any one, saying, that he was taken by No. 11, to commit this dacoity, and accompanied Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, and others, numbering seventeen persons. That he received his share of the booty, which was recovered from his premises, &c., as entered in column 11 of the calendar. Nos. 2 to 10, also confessed the crime in the same manner as the above prisoner had done, and part of the plundered property was also either recovered from their premises or given up by the prisoners, Nos. 2, 3, 4 and 5, as entered in column 11, of the calendar.

Before the joint magistrate all the prisoners, except Nos. 5 and 10, denied the charge, and also their confessions before the police which they say were extorted from them by maltreatment, those prisoners, from whom the property was recovered, claiming it as their own. No. 11 also before the joint magistrate denied the charge, urging that he was ill with fever at the time; and No. 12 in the thannah said, that he was asked by the mother of No. 11 to tell him to come home as a theft had been committed in their village, if he met him in the way as he and others had gone to commit dacoity, and that he (No. 12) was going to his father-in-law's; but before the joint magistrate he denied having gone to give information. Nos. 5 and 10 confessed before the joint magistrate that they accompanied the parties on the expedition and received their share of the spoil.

In the sessions court, all the prisoners denied the charge, urging, that their confessions were extorted by the police. Nos. 5 and 10 adding that they were induced by the police to confess before the joint magistrate through fear and intimidation, and the prisoners from whom the property was recovered claimed it as their own.

The *futwa* of the law officer convicts Nos. 1, 2, 3, 4 and 5, on violent presumption of dacoity, attended with murder and wounding, and knowingly having in their possession plundered property and declares them liable to punishment by *accoobut,* and acquits the other prisoners, in which I concurred (with regard to the guilt of the prisoners) with the exception of prisoner No. 10, whom I would also convict on his own con-

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fession before the police and joint magistrate, which was proved by the subscribing witnesses to have been voluntarily given. The prisoners, Nos. 6, 7, 8, 9, 11 and 12, have been acquitted and discharged as there was no evidence against them except their mofussil confessions, * which they retracted before the joint magistrate and before me, and they were only named by the other prisoners as being in the dacoity in their mofussil confessions. With regard to the prisoners, Nos. 1, 2, 3, 4 and 5, the prosecutor's property was recovered from them or in their premises, and which was pointed out by them and their relations and has been identified as the prosecutors. Although I concur with the futwa of the law officer, as far as the guilt of the prisoners Nos. 1, 2, 3, 4 and 5, is concerned, still I differ from him as to their being any doubt about the identity of the property, and the prosecutor having filed a supplementary list, a few days after the first list had been given in, is not in my opinion open to suspicion; because it would appear that the prosecutor was not at home when he gave in the first list, and the second was given in on its having been subsequently discovered that the inner lid of one of the chests had been forced open which at first was not known. As I have no doubt whatever of the dacoity having been committed by the prisoners, Nos. 1, 2, 3, 4, 5 and 10, in which a servant of the prosecutor, while opposing the dacoits in defence of his master's property, was killed and another man wounded, I would recommend a capital sentence being passed on prisoners Nos. 1, 2, 3, 4 and 5, and No. 10 to transportation for life with labor and irons beyond sea, as the prisoners had proceeded purposely in a boat to commit dacoity, and it being altogether a very daring one.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The Court record the following abstract of the evidence and defence in this case and their judgment upon it. Prisoner 1, Shookeram, *alias* Shookra.

Witness Shookra Sheik.—Property No. 2, a cloth was found on the prisoner at the time his house was searched. Property No. 3, a bag taken from off a *machan*. Prosecutor recognized them both.

Next day the darogah asked for more property when prisoner produced an earthen pot, buried in an open house with sundry rupees in it. Prosecutor claimed all. Prisoner said he had inherited the money.

Witness Zeinoo Fukeer.—Property Nos. 2, 3, and sundry rupees produced from prisoner No. 1's house, he was present; witness cannot say how many rupees were in the the bag.

* No. 11 himself appeared before the joint magistrate and denied the charge.

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Prosecutor claimed all. Witness points out No. 2 and No. 3, a bag with some rupees in it. No other property was produced before witness.

In the sessions court.—Witness Shookra Sheik.—A bag, property No. 3, was thrown out of the prisoner's house by a burkundauze. Prisoner claimed it; it was an empty bag; neither I nor the prisoner could see within the house, several persons entered the house, No. 2, cloth was also found, prosecutor claimed them both.

Witness on being asked why he was silent as to the rupees of which he spoke in the foujdaree court, answered; the prisoner said property was to be found in a certain house, when the police dug up sundry rupees in an earthen pot. Prisoner said there might be rupees 600 or 700, and claimed the money as inherited; I know not what prosecutor said. Witness said nothing about the rupees because he was not asked, I do not know the person who brought out the rupees, the prisoner pointed them out with his foot, I saw the spot.

Zeinoo Fukeer.—Property 2 and 3, brought out by burkundauze from prisoner No. 1's house. Prosecutor claimed them, prisoner said nothing. I *heard* from Shookra and Shageera that prisoner had produced *some rupees also*, I could see inside the house. The burkundauze said that the bag had been found on a *machan;* the cloth No. 2, had previously been brought out and I saw it in the enclosure out side. On being asked why he had in foujdaree said the rupees were in the bag, replied no, *I spoke only of a rupee bag.*

On comparing the evidence of these two witnesses as above, regarding the production of the property Nos. 2 and 3, and also the rupees, it will be seen how much they differ with each other and with themselves in the two courts. The production of so large a sum is a matter that would not readily be forgotten, yet one witness is silent upon the subject in the sessions court till cross-examined; the same witness speaks of the money found in an earthen pot pointed out by the prisoner himself which was buried in an out house open on all sides; the other witness deposes to the money being found in a bag, No. 3, produced by a burkundauze from a *machan* in the prisoner's house.

Further as to the production of property 4, 5, 6 and 7 from the possession of the same prisoner, No. 1.

In the foujdaree court witness *Sheikh Purbasoo* said that the burkundauze dug up an earthen pot with sundry rupees from prisoner's house, about rupees 400, prosecutor claimed them, the prisoner admitted they were plundered from prosecutor's house.

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Witness *Baroo Paik* said, the prisoner pointed out the earthen pot which the police dug up with rupees 500 or 600; prosecutor claimed them; prisoner stated it was plundered property belonging to the prosecutor.

In the sessions court Purbasoo said nothing of the prisoners acknowledgment of the plundered property, a fact which he had forgotten to mention Baroo deposed, that the prisoner did not admit that the property was plundered; being questioned as to the contradiction of his foujdaree deposition, he answered he had forgotten. Here there is a remarkable forgetfulness on the part of two witnesses on a point which from the large sum recovered, could hardly have escaped the memory and further forgetfulness by one witness, of the material fact that the prisoner confessed that the property was plundered at prosecutor's house.

In the calendar other witnesses Khoosboo Sirdar and Sheik Shookra and Zeinoo Fukeer above-mentioned, were examined as to the production of property from the prisoner; it was however considered by the sessions judge unnecessary to take their evidence.

I must observe that with the conflicting evidence before him, it was incumbent on the sessions judge to have taken *all* the evidence that could throw any light on the subject. It would appear that there is reason to doubt as to how and from whence the rupees adverted to by *all* the witnesses above-mentioned, were produced; the point is one of the greatest importance in this case.

Again as to the proof of the production of the box, No. 8, containing property numbered 9 to 24, from under water, the following witnesses were examined in the foujdaree court.

Ram Kisken, alias Meero Manjee, swore, that a jemadar and two burkundauzes came to the Bhela Maree jheel where he was throwing his net, and said prisoner, No. 1, had thrown some of prosecutor's plundered property into the jheel and ordered him to bring it up. Witness and burkundauzes began to search; the boat struck on a snag; he was put into the water; a box fastened with a string to an oar was found and he brought it up, and was taken to the darogah; it was opened and sundry ornaments gold and silver came out of it with some few rupees. Prosecutor, save two articles, claimed the rest. Prisoner also claimed the property. I cannot now recognize it except box, No. 8. The day before this finding prisoner once went to the jheel some 25 russees from the house, there were 4 or 5 feet of water in the jheel. Prisoner is the son-in-law of witness' sister.

Sheik Janoo Fukeer.—Two burkundauzes took me and others to the Bhela Maree jheel. Ram Kishen was fishing

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there; he was asked whether prisoner had been there, when Ram Kishen answered, yes, and pointed out the spot; search was made, the boat was struck on a stake, it was taken up, and a box was found fastened to it, it was opened before the darogah, the ornaments were produced from it and prosecutor recognized them. Prisoner claimed them; the jheel is distant from prisoner's house about 25 beegahs. Witness recognized the stake to which the box was attached as also the box itself.

Sheik Ekcowree witness was present when the box was produced. Ram Kishen pointed out an oar which was floating and the burkundauzes brought up a box from that spot; it was opened at prisoner's; sundry ornaments were produced and prosecutor claimed them; the jheel is three quarter mile from prisoner's.

In the Sessions.—Ram Kishen swore to the box, No. 8; he said he told burkundauze that prisoner had come to the jheel, but he had not seen him put any thing into the water; he was told to point the spot to which prisoner had come, he did so, the boat was put in motion, and struck on something; the box was fastened to the stake or oar, and the box was taken to prisoner's house, he said the key was in his elder brother's hands, it was broken open and sundry ornaments came out, and some cash. Prosecutor claimed all, but two articles.

The prisoner confessed in detail to the police, that he had received as his share of the plunder, rupees 400 cash and described with whom he went to the prosecutor's house; he at the conclusion of his confession claims as his own all the cash (save rupees 100 the prosecutor's property) as well as all ornaments found in the jheel. In the fouzdaree and sessions courts, he repudiated his confession, claimed all the cash, rupees 670, and ornaments which he particularised as well as the box and the bag. He was not questioned as he ought to have been, closely, by the sessions judge, as to his reasons for sinking his alledged property in the jheel and for burying his money in an open house, though in his mofussil confession he accounted for the circumstance by saying, credit would not be given him for being worth so much property. Not one of the several witnesses cited by the prisoner to prove his right to the ornaments claimed, recognized them, nor did the prisoner, on his examining them, question them at all on the subject of *the rupees* which he said were his own; the sum is a large sum for a man in the prisoner's condition, the fact of his having claimed the money and remaining silent before the sessions court as to his right to it is much against him.

The sessions judge has recommended that sentence of death be passed on this prisoner and four others in the same case. I do not consider the evidence for the prosecu-

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tion as to the finding of the property after the lapse of three weeks, at all satisfactory. The story of the property being found in the jheel as told is quite incredible; the manner in which it was said to have been discovered, shows it to have been made up. The evidence too, to the finding of so large an amount of cash buried in an open house, a foot under the ground in an earthen pot so long after the dacoity, is most extraordinary and would scarcely be admitted as proof against the prisoner, but for his persisting in claiming the property as his own without accounting in any way for the manner in which he alleges he had thus disposed of it secretly. His endeavour to establish his right to the ornaments, &c., has singularly failed; more so, his right to the cash; on the subject he did not put a single question to his witnesses in the sessious court. I cannot, however, concur in the sentence which the sessions judge has recommended. There is no proof of his having taken a leading part in the offence, though the mofussil confession, corroborated by the defence which he has set up, proves him to have been an accomplice in a dacoity attended with murder and wounding. I would refrain on this occasion, according to the practice of the court, from putting in force the extreme penalty of the law, and convicting the prisoner of the crime above-mentioned, I sentence him to imprisonment for life in transportation with irons and labor.

Prisoner No. 2, *Neelmony Chung.*—This prisoner also gave a full confession before the police, he pleaded *not guilty* in the courts. In the foujdarry he said he could not account for the property being found in his ditch and did not know who put it there. In the sessions he charged the prosecutor with having placed the property where it was found, and added he was beaten by the police. The prisoner's confession to the same effect as that of prisoner No. 1, is verified, and the production of the property is also proved. The evidence for the defence fails altogether, the witnesses who were examined said nothing in the prisoner's favor, one was absent and another repudiated when brought up.

Prisoner No. 3, *Hareepah Sheik.*—Confessed in detail as the last prisoner. Before the magistrate he stated that the property which was found buried in a corn field was not in his possession, who put it there he did not know, the property is not plundered property, and pleaded he was beaten, but had no evidence. He brought forward two witnesses to character, who spoke in very general terms and were not cross-examined by the prisoner. The witnesses to the production, Sheik Sayeh, Sheik Kabul and Tuckee Paiek, distinctly swear to the cash and other property. No. 32 to

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No. 35, having been buried some three feet deep, and produced by the prisoner who acknowledged it was plundered property.

Prisoner No. 4, Ashkah Fokeer.—Similar confession was made by the prisoner who before the magistrate and the sessions court pleaded *not guilty*, and said he was beaten, when he gave up his own property saying " plundered or not, there is property."

Of seven witnesses examined to prove he was beaten, two gave contradictory evidence in the courts, one said he saw the darogah give the prisoner a blow, four others said they knew nothing of the assault. The prisoner examined none of them with reference to the property, regarding which, however, three witnesses for the prosecution gave clear evidence to the prisoner's admitting that it was plundered property.

Prisoner No. 5, Cheedam Chung Manjee.—Confessed in the mofussil and before the magistrate to being present at the dacoity and sharing in the property, which he gave up as plundered property. The above facts are clearly proved. In the sessions he stated he was beaten and that some drugs were administered to him, on which he gave up some of his own money. He also pleaded *alibi.* His witnesses deposed that till his present seizure they considered the prisoner a good character, that he was a ryot and also a fisherman, but not one of them supported his plea of *alibi* or spoke to his having been beaten.

Prisoner No. 10, Kummul Manjee.—Made similar confessions before the police and the magistrate. In the sessions court he said he was beaten and promised his release if he confessed, and through fear did so; he too had something given to him which made him senseless; he offered evidence to character; one witness spoke in his favor, another was repudiated; two others deposed, that prisoner had left his home one and a half year ago and they knew nothing about him. Regarding the property and the assault no evidence was adduced by the prisoner, whilst his confessions to having joined in the dacoity and shared the plunder are fully proved. The prisoner is recommended for transportation for life.

The sessions judge proposes that the prisoners Nos. 1, 2, 3 4 and 5, be sentenced capitally and No. 10 as above.

There is no difference perceptible in the degree of criminality established against the several prisoners. They were all present at the dacoity, and that Goocеah Sheik was wounded on the occasion, and subsequently died of the injuries he received, there can be no doubt. There is, however, no peculiar feature in the case, which marks out one prisoner more than another as a fit subject for the enforcement of the extreme penalty of

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the law. I convict all the prisoners of being accomplices in dacoity attended with murder, and sentence them all to transportation for life, with irons and labor.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

MUSSUMMAT GHONLEE AND GOVERNMENT
versus
BEESOO ROY.

BHAUGULPORE.

1853.

May 11.
Case of BEESOO ROY.
Prisoner charged with wilful murder by throwing hard clods of earth at the deceased convicted of culpable homicide, and sentenced to seven years' imprisonment.

CRIME CHARGED.—Wilful murder of Musst. Mohraneeah.

Committing Officer—Mr. G. G. Balfour, magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 18th April 1853.

Remarks by the sessions judge.—Prisoner pleads *not guilty*. It seems that prisoner, a tall young man of 20 or 22 years old, came to deceased, who was a *chumarin*, to purchase a pair of shoes, deceased said she had none, but when she got them from mouza Tegra would let him have a pair, on which he took up and threw at her from where he was standing four hard clods of earth, two of which struck her on the head and two on the temple, when she fell dead on the instant. Deceased was a youg woman, had had three children. The clods were thrown from a distance of three or four *haths*. The clods are produced in court, they are nearly as hard as stone and about twice or thrice as large as a cricket ball. Prisoner was apprehended on the spot by Karoo, chowkeedar, witness No. 4.

The medical evidence is not in itself conclusive that death was caused by blows of clods, such as these produced in court. The only external wound of any consequence was a lacerated bruise on the cheek bone, such a wound would be caused by the progress of a stone or clod being opposed by the sharp edge of a bone. The probable and only assignable cause of death was congestion of the brain which, if brought about by any natural disease, would not have caused sudden death; but if produced by concussion, would kill on the spot. Doctor Collins goes on to state, that in this instance, death may have ensued from a blow inflicted by such clods, causing concussion and congestion without leaving any external mark.

The witnesses speak most clearly to the clods being thrown at deceased by prisoner from a very short distance, to their striking her on the head and face, and to her death immediately ensuing. There was a severe blow on the cheek, such as a

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clod thrown as described by the witnesses, would have caused. There was congestion of the brain, which if induced by concussion, would certainly have caused death. There is no doubt of deceased having died suddenly and without any other probable cause than that assigned in the prosecution. The medical evidence and that of the four eye witnesses, Nos. 1 to 4, inclusive, are clear as to the above facts.

Prisoner in his defence asserts, that deceased had been ill for three months, and died from disease; denies having thrown any clods at her; attributes the accusation to enmity caused by some dispute about removing dead cattle.

The evidence for the defence differs considerably from that given before the magistrate by the same persons; the burden of it is that deceased was said to have been laboring under some disease, three different kinds of sickness being assigned by different witnesses. No reliance is to be placed on this testimony, the witnesses contradict themselves and each other, and their story is at variance with the medical opinion of Doctor Collins, which is distinct as to deceased's body being in a healthy state, barring the congestion of the brain, which in all human probability, caused her death.

The jury bring in a verdict of guilty in which I concur.

I consider the prisoner, Beesoo Roy, to be guilty of the wilful murder of Musst. Mohraneeah. The crime is murder inasmuch as the weapons used, were of a highly dangerous, if not deadly nature, large clods of earth as hard as stone and weighing 13-10-8½ and 8 chittacks hurled by a strong man from the distance of a few paces, and hurled consecutively one after another without provocation against a defenceless woman. In convicting the prisoner, however, of the crime of wilful murder charged against him, I would not, with reference to his youth and the absence of all premeditation or motive, award him a severer punishment than fourteen (14) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The sessions judge has convicted the prisoner, Beesoo Roy, of murder, remarking that "the crime is murder, inasmuch as the weapons used were of a highly dangerous if not deadly nature, large clods of earth as hard as stone and weighing 13-10-8½ and 8 chittacks hurled by a strong man from a distance of a few paces, and hurled consecutively one after another without provocation against a defenceless woman." The sessions judge recommends a sentence of only fourteen (14) years' imprisonment with labor in irons, in consequence of the prisoner's youth and the absence of all premeditation and motive on his part.

There is however nothing in this case, to warrant a belief that the means resorted to at the moment by the prisoner were actually intended to destroy life, nor are they in themselves of such a deadly nature, that fatal consequences must have naturally followed the use of them. The sessions judge moreover sees no premeditation on the part of the prisoner, neither do I, and therefore convict him of culpable homicide and sentence him to seven (7) years' imprisonment with labor.

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PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

TALWUND RAI (No. 1), RAMDOSS (No. 2), SHEONARAIN RAI (No. 8), HALKHOREE CHOWKEEDAR (No. 9), DOMA GORAIT (No. 10) AND UJEAR CHOWKEEDAR (No. 11).

SARUN.

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Case of
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RAI and
others.

The prisoners were convicted of riot with assault and wounding. The sentence of the sessions judge confirmed in appeal.

CRIME CHARGED.—Riot attended with the assaulting and wounding of Sheosahae Sing, darogah, Ehsan Ali, burkundauze (of thannah Manjee) Sheikh Boodhun and Ramsahai Chokra.

CRIME ESTABLISHED.—Riot attended with the assaulting and wounding of Sheosahae Sing, darogah, Ehsan Ali, burkundauze (of thannah Manjee) Sheikh Boodhun and Ramsahai Chokra.

Committing Officer—Mr. R. J. Richardson, officiating magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 14th January 1853.

Remarks by the sessions judge.—This is a case of riot and assault made by some of the prisoners and others, upon the darogah of thannah Manjee whilst engaged in the execution of his duty. It appears that the day before the riot took place, the darogah had heard that a fight was likely to take place in mouza Doudpore, whereupon he deputed a burkundauze to keep the peace, but hearing again that he would probably be beaten and driven out of the place, the darogah himself proceeded there, and had no sooner crossed a small stream near the village then he was beset, and with his companions was slightly beaten and brought away with their arms tied towards Chuprah, when, however, they had come to the village of Metonlea (about 1½ coss from this) aid being given them by some of the people of the place, they were released and three of their captors (1, 2 and 8) were seized and brought in to the magistrate. It was then stated to that officer that if some persons were sent to a house belonging to one of the

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maliks of Doudpore in this city, some of the people who had been engaged in the affray would probably be found there, and this having been done, the prisoners Nos. 3 to 7, were taken and brought in and were then identified as having been present and aiding in the riot. After this the magistrate himself proceeded to Doudpore, where again the prisoners Nos. 9 to 15 were pointed out and identified, thus completing the whole number sent up for trial. There is no doubt but what the riot took place, and that the darogah was slightly beaten and mis-used in it, but I do not consider (neither does the moulvee) that the majority of the prisoners are at all satisfactorily identified as having been engaged in it. I think it clearly proved that the prisoners Nos. 1 and 2, took a leading part in the thing and that Nos. 8, 9, 10 and 11, (the three latter being chowkeedars) were all present and aiding at it; but for the rest I do not conceive that there are sufficient grounds for a conviction and they have accordingly, in concurrence with the *futwa*, been acquitted and released. All of the prisoners deny their guilt, but those convicted do not I think make any satisfactory defence, and the chowkeedars are by their own showing proved to have been present at the affair. The reason for the attack appears to have been that the villagers were in expectation of being attacked by another party who claimed the right of collecting rents, &c., and were all ready to oppose them, and when they saw the darogah they at once sallied out upon him, but whether this be the real cause or not, I consider that the case is one which might have been disposed of by the magistrate himself, but as that officer on account of the assaults having been made on the police has sent it up for trial at the sessions, the parties committed have been tried here and those convicted have been sentenced.

Sentence passed by the lower court.—Prisoners Nos. 1 and 2, two (2) years' imprisonment each, and a fine of fifty (50) rupees, or in default to labor. Prisoners Nos. 9, 10 and 11 one and half (1½) years' imprisonment, and a fine of thirty (30) rupees each, or in default to labor. Prisoner No. 8, one (1) year's imprisonment, and a fine of twenty (20) rupees or in default to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The judge (Sir R. Barlow) who revised the statements for January last, recorded the following note upon this case:—" The assault on the darogah was not fortunately attended with any serious result, but the premeditated fight, and the opposition to the police are circumstances which merited the notice of the sessions court, and the magistrate properly committed the prisoners. The case of the three chowkeedars deserved severer punishment." The crime charged

is satisfactorily established by the evidence, and the Court confirm the sentence.

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PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

SHEIKH AZMUT AND GOVERNMENT

versus

LUKHOO KHALASEE (No. 2), AND NAZEEM (No. 3).

MYMENSING.

1853.

May 12. Case of LUKHOO KHALASEE and another. Conviction of culpable homicide and sentence passed by the sessions judge upheld in appeal.

CRIME CHARGED.—1st count, culpable homicide of Sheikh Shomesh; 2nd count, being accomplices in the above crime, and 3rd count, being accessaries before and after the fact of the above murder.

CRIME ESTABLISHED.—Culpable homicide and aiding and abetting therein.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 22nd February 1853.

Remarks by the officiating sessions judge.—This case arose from a quarrel* between prosecutor and Sheikh Moteeoollah (prisoner No. 4 of the conviction statement for January 1852,) about a field, and on the night of the day on which the prosecutor sowed it, the prisoners and others seized the deceased as he was coming from a party about 3 A. M., and after severely beating him dragged him and threw him into the house of the chowkeedar, witness No. 4, of which he and three others were witnesses. The deceased was seen at day break by several of the neighbours and named the persons who had attacked him, and died six days after the injuries were received, and the evidence of the civil surgeon shows that death was caused by inflammation of the lungs and bowels, which was caused in the first, by fracture of five of the ribs and in the latter, by blows on the stomach and that the body was otherwise healthy. These two prisoners, who then absconded and who were only lately apprehended, were seen taking an active part with the others, sentenced by my predecessor on the 9th January 1852, in assaulting the deceased, though No. 2 not in the same degree as No. 3, Nazeem. The prisoners denied the charge and for their defence resorted to *alibi* and named witnesses, but whose evidence did not exculpate them from the charge. The *futwa* of the law officer convicts the prisoners of culpable homicide and aiding and abetting in the same, in which finding I concurred. On the appeal of the prisoners sentenced by my predecessor the Nizamut Adawlut in their proceedings dated 20th March last, remarked that with

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reference to the circumstances of the case the punishment ought to have been made more severe. I have therefore sentenced these prisoners according to what I considered their different degrees of guilt.

Sentence passed by the lower court.—Prisoner No. 2, to five (5) years' imprisonment, and prisoner No. 3, to seven (7) years' imprisonment, both with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The crime with which the prisoners are charged, was committed on the 16th of October 1851, and on the 15th December of that year, eight others were committed to the sessions for trial, and sentenced by the sessions judge to four (4) years' imprisonment and to pay a fine of fifty (50) rupees in of lieu of labor. That sentence was confirmed in appeal to this court, but the presiding judge remarked, that the punishment might, with reference to the circumstances of the case, have been made more severe. The prisoners who have now appealed had eluded apprehension at the time; the others were tried and were committed to the sessions, and sentence passed upon them in January last. They pleaded not guilty and assert their innocence, in appeal to this court, alleging, that they were at the time mentioned, in another part of the country. They also draw attention to the lower court's order which sentenced them to imprisonment for five and seven years, respectively, and remark that no greater degree of guilt is proved against them than against the others who have been sentenced to a term of four years only.

I see no reason to interfere with the conviction of these men; their names were mentioned throughout the depositions of the witnesses, and the declaration of the deceased taken on oath at the thannah. The assault committed by them on the deceased in company with the other prisoners previously sentenced, was a most brutal one, fracturing five of the ribs, and causing inflammation of the lungs and bowels terminating in death, and the sentence passed upon them is therefore by no means excessive. I confirm the order of the sessions judge.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND ADDOO CHUNG MUNDUL
versus
CHUNDERMONEE BUSHTBEE, ALIAS KISTOMONEE (No. 1), AND MIRTUNJOY CHUNG (No. 2.)

DACCA.

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Case of CHUNDERMONEE BUSHTBEE *alias* KISTOMONEE and another.

Conviction and sentence, passed by the sessions judge in a case of administering drugs to procure abortion from the effects of which death ensued, upheld in appeal.

CRIME CHARGED.—1st count, prisoner No. 1, homicide of Musst. Roopee Bewah, sister of the plaintiff, Addoo Chung Mundul, by administering drugs to procure abortion, and 2nd count, administering drugs to procure abortion. Prisoner No. 2, accomplice and accessary to the 1st and 2nd charges stated above.

CRIME ESTABLISHED.—Prisoner No. 1, administering drugs to Musst. Roopee Bewah to procure abortion from the effects of which she died. Prisoner No. 2, accomplice to the above crime.

Committing Officer—Syed Zynooddeen Hossein, deputy magistrate of Manickgunge.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 3rd February 1853.

Remarks by the sessions judge.—The prisoner Chundermonee is charged—*first*, with the homicide of Musst. Roopee, (sister of prosecutor,) by administering drugs to procure abortion, and, *secondly*, with administering drugs to procure abortion. The prisoner, Mirtunjoy Chung, is charged with being an accomplice in and accessary to the above crimes. It appears that deceased, who is stated to have been between thirty and thirty-five years of age, had been a widow for the last ten years; about four years ago she married her daughter to one Brijo Baroee, and about twelve months afterwards took up her residence at his house. An improper intimacy appears to have sprung up between deceased and her son-in-law, and she became with child by him. There is only one eye-witness to the actual administering of the medicine, *viz.*, Musst. Purusmonee, the sister of Brijo Baroee, deceased's son-in-law, who has absconded. She states that on Tuesday, in the beginning of Pous last, she accompained the prisoner, Chundermonee, to Brijo Baroee's house, and that she saw her give her something to take; that on her enquiring what it was, deceased acknowledged that she was five months with child and that what she had taken was medicine to cause abortion. She states further, that Brijo Baroee and the prisoner, Mirtunjoy, were present at the time the medicine was administered. That on the Sunday following the administration of the medicine, she heard that Musst. Roopee had died from the effects

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of it. The circumstantial evidence goes also to establish the facts of the case as above stated, *viz.*, that the deceased, Roopee, went and resided with her son-in-law, Brijo Baroee, that improper intimacy existed between them, and that she became pregnant, that the prisoner, Chundermonee, administered drugs to procure abortion, and that Brijo Baroee and his uncle, the prisoner, Mirtunjoy, were present at the time, aiding and abetting therein. That deceased, Roopee, became sick immediately after taking the medicine, and died a few days subsequently from the effects of it. The witnesses to the inquest are not able to state any thing as to the cause of death. The sub-assistant surgeon, whose name is entered in the calendar, had not arrived in time to be examined, I did not, however, consider it necessary to postpone the trial for his attendance, for in his report to the joint magistrate, under date the 22nd December last, he states, "I have examined the body of Roopee Bewah and regret I am unable to offer an opinion as to the cause of death." After detailing the state and appearances of the body, he remarks also that he found "the uterus with a fœtus of about three months within it," and then adds that "as the examination was made on the third day after death, and in the absence of any knowledge of the state of health of deceased before death, it is difficult to say whether these appearances resulted from poisoning, disease, or from changes after death." The prisoner, Chundermonee, confesses having administered certain drugs to deceased in order to procure abortion, both in the mofussil and before the deputy magistrate, and these confessions have been duly attested. In this court she denies and pleads, that the confessions were extorted, but the plea is not supported by the witnesses called by her.

The prisoner, Mirtunjoy, denies the charge, and has done so throughout. He is the uncle of Brijo Baroee, by whom deceased was with child, and lives in the homestead with him, and it is proved that he was present when the drugs were administered, and when deceased was suffering from the effects of them, said that in case of her dying he would have the body burned. He is the chowkeedar of the village and reported the death as soon as it happened, but in his report he admits his knowledge of the medicine having been administered on the Tuesday to the woman, and having died on the Saturday following. His plea of innocence, on the score of having given information to the police, is not admissible, I consider it to have resulted from his having become alive to the position which the death of the woman placed him in. His witnesses speak only to his general character. The *futwa* of the city cazy, who sat with me

on the trial, as reported in my letter No. 58, dated the 2nd February 1853, convicts the prisoner, Chundermonee, of causing the death of Musst. Roopee by administering drugs for the purpose of procuring abortion, and the prisoner Mirtunjoy Chung of being an accomplice therein, in which finding I concur, and have sentenced them, as described in column 12, of this statement. This is the fourth case of the kind which has occurred in this same thannah within the last two years, I have therefore sentenced the prisoner No. 1, to the extent of the power of this court.

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Sentence passed by the lower court.—Prisoner No. 1, imprisonment for seven (7) years, with labor suitable to her sex. Prisoner No. 2, imprisonment without irons for three (3) years, and a fine of 50 rupees, or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—On perusal of the record the court see no reason to interfere. The appeal is rejected.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

KALOO CHUNG (No. 7), SHAM CHUNG (No. 8), BUDDUN SHAH (No. 9), AND HAROO CHUNG (No. 10).

RAJSHAHYE.

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May 14. Case of KALOO CHUNG and others.

Two prisoners, convicted of each committing a rape on the person of the same woman, sentenced to seven years' imprisonment. A third prisoner convicted as an accessary before the fact—sentenced to three years' imprisonment.

CRIME CHARGED.—Nos. 7, 8 and 10, with committing rape upon the person of Juggutmunee Bewah. Prisoner, No. 9, with aiding and abetting in the commission of the above-mentioned crime.

Committing Officer—Mr. F. L. Beaufort, officiating joint magistrate of Pubna, Zillah Rajshahye.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 21st April 1853.

Remarks by the sessions judge.—The crime (rape) of which two of the prisoners are convicted by the *futwa* renders the reference unavoidable.

The only direct evidence to the rape, or rather *rapes*, (as three of the prisoners are alleged to have had forcible connection with the witness) is that of the woman herself.

She is a widow, of rather pleasing appearance, but not very young. She seems to have obtained for her place of residence the house of one Surroop Paul, in the vicinity of the dwelling of the prisoner, Buddun Shah, No. 9, and with whom she is related by marriage.

She deposes that the prisoner No. 10, on the night of the occurrence, came and called her, but having no light she called

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to No. 9 to give her one, who replied if she wanted one she was to come herself and take it.

She on this went to No. 9's house, but seeing three men sitting outside asked who they were, when the reply was "never mind come" and on her advancing she was laid hold of by the three prisoners, carried off by them to a *sursoo* field, and there was raped by No. 7 first, by No. 10 second, and last by No. 8, and that they assisted each other to hold her down while one of them had his will of her. After this she was carried to a clump of bamboos, where Nos. 10 and 7, a second time had forcible connection with her, and when the morning dawned they took her and left her at the house of Poorna Bewah.

She recognized the prisoners, as they all four live close to her. That in consequence of pain, from the treatment she had received, she could not complain sooner at the thannah, but she told the chowkeedar, and when she was informed she must go herself, she went and lodged her complaint.

The witness then wished to show some marks of bruises she had received on her waist and back, but the law officer and myself thought this might be dispensed with.

The next witness No. 10, a neighbour, deposed to hearing the last witness call out that some one was carrying her off, when he went to her house, but could not find her, and on asking No. 9, what had become of her he said she had been carried off.

The next two witnesses seem to have been concerned in the plot against the witness No. 1: they deposed to having been invited to come and perform a vulgar ceremony, called "*huree loot*," at the house of No. 9, when the prisoners Nos. 7, 8 and 10 carried off Juggutmonee—seeing this they ran away.

Nos. 7 and 8, both in the mofussil and before the joint magistrate confessed to having had forcible connection with the witness No. 1, and that the prisoner No. 10 lifted her up and carried her off from the house of No. 9, and had first his will of her.

It is not, I conceive necessary for me to translate the confessions as they must be read by the Court.

In cases of murder there are various motives for the crime, but in rape there is but one, the gratification of lust. Though I recollect once to have heard urged, in extenuation of a rape committed on the wife of the prosecutor, that one of the opposite party had raped the prisoner's wife. In this case, however, the motive is quite a novel one.

In their mofussil confessions, the prisoners Nos. 7 and 8 state, that they had been induced to commit the rape on the

witness Juggutmonee at the instance of No. 9, as he wanted to get her house for his own relative, Patoo Shah, who was living with him, Patoo having promised to pay all expences. 1853. May 14. Case of KALOO CHUNG and others.

In the foujdaree the prisoners stated, they had been instigated to commit the rape by Raloo and Issore Chuckerbutty, who wanted them to disgrace and abuse Juggutmonee, so that she might be forced to leave the village, and they promised to pay them if they did so.

Which of these is the true motive it is impossible to say, but in either case the prisoners were guilty of the outrage for the sake of a pecuniary reward, in fact hired ravishers, and they richly deserve punishment.

No. 10 also confessed both in the mofussil and before the joint magistrate. From the depositions of the witnesses Nos. 1 2 and 3, it would appear, that the whole plot, or conspiracy, was laid at his house. It is clear, he never attempted to prevent her being carried off before his eyes, and as to his statement, that his wife held him and would not let him go out to assist the woman, this must be taken with many grains of allowance.

That all the confessions were voluntarily made, both before the police and the joint magistrate, I consider fully proved.

Nos. 7 and 8, in their defence say, they were beat and made to confess by the darogah, who told them, if they adhered to their confessions before the joint magistrate, they would be released. But if so, why did they give such a different account as to the parties who had instigated them to commit the rape? and resorting to the usual practice of defaming the character of the woman is the worst kind of defence in such a case.

No. 9, in his defence, admits the woman is his relative; but accuses her of having an intrigue with a brahmin to whom he mentioned her levity of conduct, and which led to the brahmin breaking off the connection and turning her out, when he had placed her in another house, hence the charge against him.

Now so far from the woman complaining against the prisoner, it would seem, that his confession led to his being made a defendant by the police, and if reliance is to be placed on the confessions of the others, it was in his house that the whole outrage was planned, and from which the woman was forcibly carried off.

No. 10, pleaded an *alibi*, but his witnesses failed to establish the plea.

I therefore, in concurrence with the *futwa*, consider Nos. 7 and 8, on their own confessions, guilty of rape. No. 10, on the evidence of the witnesses Nos. 1, 2, and 3, guilty of carrying off the woman for the purpose of rape, or aiding

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in rape, and No. 9, on his own confessions, I convict of privity and having by counsel and advice instigated the others to the commission of the outrage. As the sentence, on conviction of rape and aiding therein, under Clause III., Section VI., Regulation XVII. of 1817, rests with the Superior Court, I leave the measure with them.

In conclusion I may mention, that the witness Juggutmonee in the mofussil named Haree, by mistake, explaining, that the prisoner Kaloo called Shama Haree, and she (not knowing his name then) adopted the one she heard Kaloo use. In this court she pointed out Shama as the person who had committed a rape on her, and the prisoner, in both his confessions, admitted the fact.

Remarks by the Nizamut Adawlut.—(Present Mr. H. T. Raikes.)—The prisoners Nos. 7 and 8, confessed before the police and the joint magistrate. There can be no doubt of the guilt of these men, but I dissent from the sessions judge as to the proof against the prisoner Harroo Chung, No. 10. It is a mistake in the letter of the sessions judge, para. 17, to say that this prisoner "confessed both in the mofussil and foujdaree," from the context it is very evident the sessions judge meant to allude to No. 9. The prisoner No. 10, was never examined in the mofussil, he apparently gave himself up to the magistrate on hearing he was accused, and denied all participation in the outrage. The sessions judge observes—that he considers him "guilty of carrying off the woman or aiding in rape" on the evidence of the witnesses Nos. 1, 2 and 3. The witness No. 1 is the woman herself, who identifies this prisoner as one of her ravishers, and the witnesses Nos. 2 and 3, are said to have been themselves engaged in the plot, and to have gone with the others to the house of the prisoner No. 9, whence the woman was taken off, but to have run away when they saw the other prisoners carry her off. This account, however, is not reconcileable with the story told by the woman herself (witness No. 1) who declares she saw only three men sitting outside the house of No. 9, and identifies them as the accused parties. Had there been more men she would in all probability, have seen them and mentioned the fact. I therefore, reject the evidence of these men who were made approvers by the joint magistrate, as their statements are open to suspicion. The woman's evidence is, therefore, the only matter against the prisoner No. 10, and though in a case of rape entitle to great weight; when even standing alone if supported by proof of the fact of violence having been committed upon her, cannot, I think, be deemed conclusive as to the guilt of several individuals, when as in the present instance, more than one is said to have been concerned. The fact of the vio-

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lence having been perpetrated is sufficiently accounted for by the acts of the two confessing prisoners without necessarily implicating another person; the evidence, therefore, is not sufficient, in my opinion, to convict this prisoner of having had any hand in the matter.

After rejecting the evidence of the approvers, as I do, there is nothing against the prisoner No. 9, but his own confession. From these it is very clear that he was a passive witness to the abduction of the woman ; the only question is, was he cognizant of the purpose for which the prisoners carried her off. In his mofussil confession he admits that he was, but before the joint magistrate he denies knowing more than that the woman was carried off by some persons. The circumstances stated by him in his mofussil confession are corroborated in the confessions of the other two prisoners, and there is no doubt that the men met at this prisoner's house, and that he himself spoke to the woman and induced her to come out when the others were there; what followed immediately afterwards was so evidently the work of premeditation and design, that in my opinion it justifies a strong presumption of this prisoner's guilty knowledge, and I therefore convict him as an accessary before the fact.

Under the above view of the case, I convict the prisoners, Kaloo Chung, No. 7, and Sham Chung, No. 8, of committing a rape on the person of Juggutmonee and sentence them, under the circumstances of the case, to seven (7) years' imprisonment with labor and irons, and Bundun Shah, prisoner No. 9, as an accessary before the fact, and sentence him to three (3) years' imprisonment with labor and irons; and not being satisfied with the evidence against Haroo Chung, prisoner, No. 10, acquit him, and direct his release.

PRESENT;

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND GOOROOPERSAUD BUNICK

versus

SHEIK HARAN (No. 1), SHEIK ROOPAI SIRDAR (No. 2), SHEIK ADEY (No. 3, APPELLANT), KACHAI KHAN (No. 4, APPELLANT), SHEIK KOBOO (No. 5, APPELLANT).

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Case of SHEIK ADEY and others.

The prisoners were convicted of burglary attended with wounding. Sentence of the sessions judge (seven years' imprisonment with labor in irons) confirmed.

CRIME CHARGED.—1st count, dacoity with wounding and plundering property to the value of rupees 126-15-3; 2nd count, accessaries to the said dacoity both before and after the fact; and 3rd count, prisoners Nos. 2, 3 and 5, are further charged with receiving and possessing portions of the plundered property, knowing them to have been acquired by the said dacoity. Against, Nos. 3 and 4, 3rd, and against, Nos 2, 3 and 5, 4th counts. Burglariously entering the house of Gooroopersaud Bunick, prosecutor, and stealing therefrom property to the value of rupees 126-15-3, and wounding Bykunt and Mohesh Bunicks. Against Nos. 1 and 4, 4th, and against Nos. 2, 3 and 5, 5th counts. Accessaries to the said burglary and theft, both before and after the fact, and against Nos. 2, 3 and 5, 6th count, receiving and possessing portions of the stolen property knowing them to have been acquired by the said burglary and theft.

CRIME ESTABLISHED—Burglary and theft of property attended with wounding Bykunt and Moheshchunder Bunick.

Committing Officer—Mr T. B. Mactier, joint magistrate of Furreedpore.

Tried before Mr. C. T Davidson, sessions judge of Dacca, on the 21st February 1853.

Remarks by the sessions judge.—The prisoners were committed for trial, charged—*first*, with dacoity with wounding, and plundering property to the value of rupees 126-15-3; *secondly*,—with being accomplices in the above crime, and *thirdly*, with receiving property knowing it to have been acquired by dacoity. On perusing the foujdaree record, it was quite clear to me that the charge of dacoity could not be sustained, and the committing officer was directed to amend the commitment by inserting a fresh charge substituting the word burglary for dacoity. The whole of the police foujdaree record shows, that the case was one of burglary and had been treated as such from beginning to end, and that it was only at the time the commitment was made, that the character of the crime was changed. The circumstances of the case are as follows:—Pro-

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secutor was absent from his house on the night of the occurrence. He returned on the following day and heard from his father-in-law, Cheedam Bunick, that his house had been broken into and robbed, and that on his (Cheedam's) calling for assistance, his neighbours came and secured the prisoner, Sheik Haran. He found, on examination, that a hole had been cut into his house, by which an entrance had been effected; that his box had been broken open, and property to the amount of rupees 126-15-3 had been carried off. The witnesses Nos. 1 and 2, depose to having heard prosecutor's father-in-law, calling for help, to their having run to the spot and seized the prisoner, Sheik Haran, and to their having been assaulted and wounded by his companions, who endeavoured to secure him. The prisoners confess both before the police and the joint magistrate, and these confessions have been duly attested before this court. The recovery of a portion of the property from the prisoners Nos. 2, 3 and 5, has also been established by evidence, and the recovered property duly recognized as that of the prosecutor, the most of it his own, three items being under pawn. The prisoners deny the charge and plead that their confessions were extorted. They have set up no good defence, and the witnesses examined on their behalf in no way exculpate them. The *futwa* of the law officer convicts the prisoners of burglary and theft of property attended with wounding, in which finding I concur, and, considering that the injuries sustained by wounding, were not of a serious nature, I have sentenced them as described in column 12.

Sentence passed by the lower court.—Seven (7) years' imprisonment each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The case was clearly one of burglary and theft; the entry into the house having been effected not by open force, but by the cutting of a hole in the wall. The proof is very full, and the Court see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT, MEGRAJ GWALA AND OTHERS

versus

SURUBJEET BOGTA.

BEHAR.

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Case of SURUBJEET BOGTA.

Prisoner charged with highway robbery attended with wilful murder and wounding, acquitted on account of the material discrepancies in the evidence.

CRIME CHARGED.—Highway robbery attended with the wilful murder of Musst. Soquernia, *alias* Bilsee, and wounding of Musst. Puchia, and theft of property valued at rupees 3-15.

Committing Officer—Mr. F. Hogg, deputy magistrate of Shcrghotty.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 19th April 1853.

Remarks by the sessions judge.—The deceased, mother of the two prosecutors, and Musst. Puchia (witness No. 1), is said to have been returning from the Mudunpoor bazar, accompanied by her daughter, Puchia, when towards evening of 3rd February last, they reached a wild part of the country amongst hills and jungle, but nearer the spot Kungal Tar Bythan (½ mile distant from Dobra, *vide* map No. 5,) where the two brothers and sister, Puchia, had been located some time past, grazing their cattle, than any other habitation, and from whence mother and daughter are said to have started from the bazar in the morning, though there are even contradictions in this respect also. Here the prisoner, Surubjeet, and his two brothers, Laljeet and Chooheya absconded, who had been following them some distance, came up and volunteering to carry the deceased's bundle, to which she objected, near a place, known as the Choolwa Pukhan, they plundered her of it, as well as her clothes, valued altogether at rupees 3-15, and then cruelly beat her to death with stones. They also beat Puchia and threw her amongst the rocks. On the two witnesses, Deepun's (No. 2) and Ukul's (No. 3) coming up, who found the deceased murdered by the road side, and learning particulars of what had happened from Puchia, they at once informed Sobrun Gwala (No. 11), at the Kungal Tar Bythan. Megraj is said to have been absent that night, though the other brother, Moosun, according to himself was not. Nothing was done until the following morning, when on Megraj's arrival, the two brothers started for Choolwa Pukhan, and met Puchia by the way crawling homewards. The two brothers proceeded onwards, took up their mother's corpse and brought it to their quarters at the Kungal Tar, where, keeping it the second night, the next day, acting on the advice of their landlord, Pauchoo Singh, "that as poor people, they should keep quiet," they

burnt the body and made no complaint. Afterwards on Megraj's visiting his mother's relations, in the Hazareebagh district, they warned him of the responsibility he had thus incurred. Accordingly on his way back, he appeared at the Sherghotty thanna, on 18th February last, with a formal complaint, although the alleged crime took place within the jurisdiction of the neighbouring thannah of Aurungabad. The Sherghotty darogah at once proceeded to the prisoner's village, where he was apprehended wearing a cloth, which Megraj is said to have recognized, as having belonged to his mother. Subsequently the darogah of Aurungabad forwarded the case as proven against the prisoner.

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The foregoing main facts have been deposed to by the two prosecutors, Puchia, (witness No. 1), Deepun (No. 2), Ukul (No. 3) and Sobrun Gwala (No. 11); the identity of the cloth by witnesses, 1, 11, and the weaver Pauchoo, (No. 12), who wove it, and the prisoner's apprehension, under such circumstances, by witnesses, 8, 9 and 10.

The prisoner has always pleaded "*not guilty*" though at the same time implicating his brothers, Laljeet and Chooheya, of having probably committed the murder. He claimed the cloth found on his person as his own, woven for him by Kulloo Joolaha, whom he summoned in proof as well as another, Chuttoo Hujam, but both of whom before the deputy magistrate declared ignorance. He called no witnesses before this court; acknowledged the statement made by him before the deputy magistrate, and set up no intelligible defence in any way accounting for the accusation against him, beyond that the witnesses, Deepun and Ukul, were his ryots, which, as acknowledged by them, appears to be the case in a petty lease held by the prisoner. The prisoner looked a dull, heavy man, vehement in declaring the prosecution had been all got up against him *(Lugan)* without, in any way, attempting to account for it.

Puchia's evidence taken by the police, on 21st February last, records some eight slight marks of violence as having been then visible on her person, but when appearing before Dr. Diaper, on 8th March following, he found her "suffering from an ulcer ½ inch in diameter on right side of neck below angle of the jaw," as also another somewhat smaller on the right shoulder, also a "cicatrix on the head about 1 inch long, with several smaller ones in its vicinity." He is of opinion that, "the ulcer and cicatrix cannot be the result of recent violence, and whether they were caused by violence inflicted some time back, or whether they are spontaneous, he cannot take upon himself to say."

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The *futwa* of the law officer, acquitting the prisoner of wilful murder, but relying on the testimony of the witnesses, Deepun and Ukul, convicts him on strong presumption of the culpable homicide of the deceased and wounding of Puchia, attended with highway robbery, and declares him liable to extreme punishment for the price of blood by *Deeut Moghulza.*

If the case is proven at all according to the prosecution, it cannot be viewed in any other light than a wilful murder of the most atrocious kind. The prisoner's defence is certainly most unsatisfactory, but it is not on that alone that I can rest a conviction. Regarding the prosecution as I do as having most egregiously broken down, although the motives for a false prosecution are altogether hidden, yet, when such results bespeak wholesale concoction, much intrigue must have been at work, which in this country need not cause astonishment, at any kind of defence set up by, and obstinately persevered in, by a prisoner to the last.

The prosecution makes unlimited demands on one's credulity without, in as far as I can discover, offering a single reliable particular in exchange. With the suppression of such a crime, in the first instance, the material "*corpus delicti*" disappears, and we are called upon to accept Megraj's own account of his having been at last brought to a sense of his duty by his Hazareebagh relatives. Every thing then brought to light ought to have been truthful and consistent to make up in some degree for so much thus originally wanting, whereas I find the very reverse to be the case. The prosecution results not in one or several, but a mass of contradictions, aud inconsistencies out of which I find it impossible to frame with any security either a connected or probable narrative of the crime and its detection. The deputy magistrate excuses the prosecutors, Megraj and Moosun, as ignorant countrymen, but I confidently refer to their and their witness's examinations before this court in proof of the contrary, for no ignorant countrymen could have so readily invented the answers they did, so contradictory of one another.

Musst. Puchia looks a tall, active girl, above 15 years of age. There can be no doubt of her intelligence, for as will be observed from her replies under examination, she has done her best's like all the rest to act her part to the very last. The beating she received could not have been very severe, for immediately on Deepun and Ukul's arrival she told them all that had happened, as they did not witness the murder, only Puchia's beating, their only authority for the communication they made to Sobrun Gwala. She says also they told her they would hasten on, and she could follow leisurely. Deepun

would give no reply why they had thus left a helpless girl, half murdered according to their own account, in so wild a place, and the only explanation Ukul would give was that they had told Sobrun. There is no proof of the severity of the beating she pretends to have suffered so severely from both at the time and days and weeks afterwards, but on the other hand the strongest presumption to the contrary, from her own and her brother's contradictory statements in this respect hereafter detailed. She made no attempt to reach her brother's location at Kungal Tar, though not a mile distant from the Choolwa Pukhun. She fell asleep and passed the night in the jungle alongside her mother's murdered corpse without fear, though Sobrun (11) said her brother Moosun excused himself for not starting in search of her that night, and himself and his three companions for not having done so, consequent on the night, and the wildness of the place, though their own location of Kungal Tar, and their own daily habits could have been little better.

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According to Deepun, Ukul and Sobrun, the two former never communicated to the latter, the robber murderer's names. As nothing further was heard of Deepun and Ukul until Surubject's apprehension, no other possible authority than Puchia's could have existed for the recognition of the robbers, and their having been originally named by the prosecution, yet what is Puchia's own account of the matter? Before the police she said "she had never seen them before." "*Puhlee na dekha,*" but whilst assaulting her mother, her mother called them by name, saying she recognized them, to which they replied, then we wont leave you alive, how will you complain? It was thus she, Puchia, knew their names. The chances are, she would never have remembered the names of three strangers under such circumstances accordingly when first questioned thereon by this court, she pretended they had often called at their location Kungal Tar, and on their being asked if so, why they had questioned her mother as to how many sons she had, she remained speechless, and when further questioned, how often she had seen the three robbers before, she acknowledged each only once, yet when her mother asked the robbers their names she, Puchia, told her she knew them. Whilst Megraj said the robbers were old acquaintances of his mother, but unknown to Puchia, until the day of the occurrence, the other brother, Moosun, said his sister, Puchia, had known the robbers for more than a year, from having been in the habit of selling butter-milk in their village.

Deepun and Ukul's narration, as well as their first replies under examination are intended to convey the impression of their having told Sobrun Gwala as the first person they acci-

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dentally met after the occurrence, whereas the actual fact is, that Sobrun was the two prosecutors' companion in the same location at Kungal Tar, and of which these witnesses themselves were well aware, as is amply manifest by their final replies under examination, as also by Ukul's prevarication, which makes it appear they had gone upwards of two miles out of their way to meet Sobrun, where they did, for although Sobrun has also prevaricated about it, still he acknowledged, that his thus meeting these two witnesses took place quite close to the location. Sobrun also said that though Deepun and Ukul did not name the robbers, they named the deceased and her daughter, whilst Deepun denied even having done so, and Ukul would give no reply about it. If these two witness's behaviour is as extraordinary as it is incredible, prior to and whilst reporting the occurrence to Sobrun, their subsequent conduct is of a like nature. Residents of the same village, they daily saw the robber murderers they had thus recognized at the scene of the murder, for days and weeks unapprehended and yet kept silence. Deepun appears to be a connection of the prisoner, but neither this nor any other circumstance narrated by them, can account for their extraordinary conduct from first to last.

If Deepun and Ukul's conduct is of such an unsatisfactory character, Moosun's and Sobrun's is still worse. Sobrun can be regarded in no other light than the prosecutor's companion at Kungul Tar. If Megraj was not in the location when Deepun and Ukul reported the occurrence, the other brother, Moosun, was the same evening, both according to himself and Sobrun. Sobrun said he communicated the intelligence to Moosun, who replied how could they go into the hills and jungle at night time although there were two others, Peetumber and Boodhun thus altogether four men, in the location at the time. Even Puchia cannot account for such conduct except that they had all abandoned her. But Moosun also contradicts both Sobrun and Puchia. Whilst eating his dinner Moosun saw Sobrun tying up his cattle, both their huts are close together; yet Sobrun never told him what had happened, and he was not uneasy about his mother and sister's not having returned from the bazar, as she was in the habit of passing the night there which Puchia herself as explicitly denies.

The like extraordinary contradictions attend the brothers and sister's explanation of their conduct in the interval between the occurrence and complaint. Puchia gave a pitiable tale of her own helplessness. Megraj took her from Kungal Tar to their home at Duneytha the following day and, returning to make overcharge of the cattle, came back again the next day accompained by Moosun, when Megraj nursed her for eighteen

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or nineteen days until he left for Hazareebaugh, when Moosun took charge of her, in which state the darogah found her, and she was not able to move about for eight or nine days after her evidence had been taken by the police. This evidence, accompanied the report No. 6, of 22nd February, dispatched from Dobra, where the implicated land-holder, Panchoo Sing, resides, and when asked how she managed to reach that place three miles distant from Duneytha, she replied her two brothers, Megraj and Moosun, carried her there on her cot. Contra to this, Megraj says, Moosun carried his sister in his arms to Panchoo Sing's at Dobra, the day after the occurrence, where both remained until found there by the police whilst he, Megraj, at the same time, started for his relatives in the Hazaureebaugh district, where he was detained fifteen days consequent on his maternal uncle's absence. Contra to this again, Moosun said Puchia remained some three days at Kungal Tar after the occurrence, when assisted by Megraj, he conveyed his sister to Panchoo Sing's at Dobra, who gave them an empty house to live in, and where the police found them. Also that Megraj continued with them there five days when he left for Hazareebaugh.

There is nothing reliable by itself alone in the alleged recovery of the deceased's cloth, on the prisoner's person. When worn by the deceased, it was a *dhotee*, when found on the prisoner's person, it had been turned into a *chadur*. The prosecutors and witnesses pretended they recognized it by certain seams, but according to its manufacturer, Panchoo Joolaha's own showing, there was nothing unusual in such seams, which other weavers were in the habit of weaving as well as himself.

It is impossible to uphold a prosecution so thoroughly faulty, and radically contradictory on every point, some one of which ought to have been corroborative of it, if in any degree truthful. Whatever may have happened, the prosecution as supported by the persons deposing to it, is a manifest concoction as regards what they narrate, and I can therefore form no other judgment, than that the prisoner must be acquitted for want of proof of guilt. With such results also, I necessarily regret that the deputy magistrate should have so implicitly adopted every thing brought forward by his two police officers, in support of such a *primâ facie* questionable complaint, without a thorough scrutiny emanating from himself, into every attendant circumstance arising out of such a complaint, its probabilities, and the character of the evidence supporting it, which when proving in every respect positively trustworthy, in the absence of so much of the essential "*corpus delicti*" could alone have entitled it to a favorable hearing.

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Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The evidence against the prisoner consists of the testimony of Puchia and the two men Deepun and Ukul. Puchia says, that after the prisoner and his associates had cruelly killed her mother ,they beat her and threw her amongst the rocks by the road side from whence she saw them drinking liquor, which Lalljeet had brought, till alarmed by the approach of Deepun and Ukul, on seeing whom the robbers fled with the property they had stolen into the jungle. Deepun and Ukul say, they heard some cries, and hastening on, they saw the prisoners Surubjeet, Lalljeet and Chooheya beating Puchia and called to them to let her go, on which her assailants made off towards the jungle. Their statement, therefore, differs from Puchia's, according to whose account the robbers, after murdering her mother and beating herself till she was nearly senseless, set to drinking by the road side till surprised by the approach of the other witnesses, when they fled on seeing them. Whereas the witnesses say, they saw the robbers in the act of beating Puchia, and they only desisted on seeing them. Nothing can reconcile these accounts. These witnesses also state, that after leaving Puchia at nightfall in a helpless state with the corpse of her mother by the road side, they proceeded to the cattle station, and told Sobran, that two women belonging to the station had been attacked by robbers, one of them cruelly murdered, and the other severely beaten, yet they never mentioned the names of the persons whom they saw only a short time before almost in the act of committing this outrage, nor did any one go to the assistance of the women or even seek out their relations to apprise them of their fate. It is on the evidence of these two men, as supporting and corroborating the testimeny of Puchia, that the moulvee grounds his conviction of the prisoner, deducing from it, and the recognition of the cloth on the prisoner, a violent presumption of his guilt. But as pointed out above, the depositions of these parties do not agree on a very material point, namely, as to the time when the male witnesses came up and the opportunity they had of recognising the prisoner, while their silence on the point of recognition when reporting the robbery and murder at the cattle station *that evening, leaves* the truth of their statements still more doubtful. The piece of cloth found on the prisoner seems to have been of a common description and scarcely susceptible of recognition, it does not, therefore assist the prosecution at all. I entirely agree with the sessions judge, in considering there is no sufficient proof against the prisoner, and acquit him. A copy of the sessions judge's remarks should be sent to the deputy magistrate for his information.

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT
versus
GOPAL BAWOREE.

EAST BURDWAN.
1853.
May 14.
Case of GOPAL BAWOREE.
The prisoner convicted of perjury and sentenced to imprisonment with labor in irons for one year and a half.

CRIME CHARGED.—Perjury, in having on the 13th July 1852, intentionally and deliberately deposed, under solemn declaration taken instead of an oath, before the deputy magistrate of Boodbood, that he saw Bhoyrub Ghose, Dinoo Mondle and Gopeemohun Ghose wounded in a case of affray attended with the culpable homicide of Gopeemohun Ghose, and in having on the 7th October 1852, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the sessions judge of zillah East Burdwan, that he did not see any such assault or affray taken place, such statements being contradictory of each other on a point material to the issue of the case.

Committing Officer—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. J. H. Patton, officiating additional sessions judge of East Burdwan, on the 3d May 1853.

Remarks by the officiating additional sessions judge.—The prisoner was committed under the orders of the Nizamut, and the perjury with which he is charged consists in his having made contradictory statements under solemn declaration on a point material to the issue of the case.

The prisoner denies the charge, but the evidence against him is conclusive in my opinion. That evidence is comprised in the record of his first deposition before the deputy magistrate of Boodbood, and its attestation by the inscribing officer, in which he states that he witnessed the affray and wounding, and that of his examination before the session's court under similar verification in which he affirms that he did not see any assault or affray, both statements having been deliberately and intentionally made under solemn affirmation on a point material to the issue of the case.

The *futwa* of the law officer acquits the prisoner on the ground of absence of proof, contending that the testimony of one person cannot attest the record of a deposition repudiated by the alleged examinee.

I dissent from the finding, and hold that the first deposition is abundantly proved by the record itself and the attestation of its inscriber, the denial of the prisoner notwithstanding. I therefore refer the case for the orders of the court, and

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May 14.
Case of Gopal Baworee.

recommend, that the prisoner be sentenced to one year and six months' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I concur with the sessions judge. The contradictory depositions made by the prisoner on oath bear the signatures of the deputy magistrate and of the sessions judge respectively, and each of them has been clearly and distinctly sworn to by the mohurer who took down the statement. In a case such as this, the evidence is sufficient. I convict the prisoner and sentence him as proposed by the sessions judge.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT AND AKBAR SIRDAR

versus

BUDDUN ATPUHUREAH (No. 19), BUSSEROODDEEN KAREEGUR (No. 20, APPELLANT), DAIMOOLLAH BHOOEAH (No. 21), SHEIK MELYE (No. 13), SUTTORAM BISWAS (No. 16), RAMCOOMAR MUNDUL (No. 17), ASALUT SIRDAR (No. 22), AND RAMCOOMAR MUNDUL (No. 23.)

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May 16.
Case of Busseerooddeen Kareegur

Plea as to mistaken identity, urged for the first time in appeal to the court, rejected; the prisoner having adopted a totally different defence in the sessions court.

CRIME CHARGED.—1st count, riotously in an armed body attacking the village of Goopeenathpore, and maliciously setting fire to the house of Akbar Sirdar, prosecutor; 2nd count, riotously in an armed body attacking the village of Goopeenathpore; 3rd count, assembling in an armed body near the house of Akbar Sirdar, prosecutor, with intent to commit a riot; 4th count, accomplices to the above three crimes, and 5th count, aiding and abetting in the above-mentioned crimes.

CRIME ESTABLISHED.—Being present, armed in a riotous attack in the village of Goopeenathpore in which the house of Akbar Sirdar, prosecutor, was burned down with the property it contained.

Committing Officer—Mr. T. B. Mactier, joint magistrate of Furreedpore.

Tried before Mr. C. T. Davidson, sessions judge of Dacca, on the 10th February 1852.

Remarks by the sessions judge.—The circumstances of this case are the same as those in the two* foregoing, The prosecution being at the instance of another ryot of mouzah Goopeenathpore, whose house was also burned down by the rioters. Three witnesses to the fact have attended and been

* Case of Buddun Atpareah and others, decided on the 19th April 1853.

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May 16.

Case of BUSSEERROODDEEN KAREEGUR.

re-examined, and they adhere to their former statements. They recognize the prisoners, Nos. 19, 20, 21, 13, 16, 17, 22 and 23, as having been among the rioters, who attacked the village of Goopeenathpore and burned down the house of prosecutor. The prisoners deny the charge, but their defence does not tend to exculpate them. The *futwa* of the law officer convicts them of being present, armed, in a riotons attack upon the village of Goopeenathpore, in which the house of prosecutor was burned down with the property it contained. In concurrence with this finding, the prisoners, Nos. 20, 16 and 22, have been sentenced as described in column 12 of this statement. The prisoners, Nos. 19, 21, 13, 17 and 23, have been sentenced in other cases, no sentence has therefore been recorded against them in this.

Sentence passed by the lower court—prisoners, Nos. 16, 20 and 22. Five (5) years' imprisonment each, with labor and irons; prisoners Nos. 13 and 23, see sentence recorded in trial, No. 10, for September 1852. Prisoner No. 17, see sentence recorded in trials, Nos. 4 and 5, prisoner No. 19, see sentence recorded in trial, No. 4, prisoner No. 21, see sentence recorded in trial, No. 5.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—There has been a subsequent separate appeal by No. 20, Busseerooddeen Kareegur, on the ground that he is not the person of that name who was originally accused by the prosecutor, but a different party, not a ryot or dependent of Mr. French. This, however, was a plea not preferred before the magistrate, and though the prisoner summoned witnesses who were examined on his behalf at the trial, it was to prove quite another, and indeed contradictory point, that he was (without questioning his identity as the person accused) at another place on the day of the outrage.

The plea was not taken till the final defence at the trial and deserves no consideration.

PRESENT :

H. T. RAIKES, Esq., *Officating Judge.*

BURKUTOOLLAH

versus

SHIBRAM DEO, ALIAS RAMKOOMAR DEO.

TIPP RAH.

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May 17.

Case of SHIBRAM DEO, *alias* RAMKOOMAR DEO.

Prisoner convicted of knowingly uttering counterfeited coin, and sentenced to three years' imprisonment. Conviction and sentence confirmed in appeal.

CRIME CHARGED.—1st count, knowingly uttering conterfeited coin, and 2nd count, fraudulently offering for sale to the prosecutor a silver gilt pice, representing it to be an eight anna piece.

CRIME ESTABLISHED.—1st count, knowingly uttering counterfeited coin, and 2nd count, fraudulently offering for sale to the prosecutor a silver gilt pice, representing it to be an eight anna piece.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 5th March 1853.

Remarks by the sessions judge.—The prosecutor had closed his shop on the evening of the 21st of January, at about the hour of 7 P. M., when the prisoner, who appears to have been a stranger, came up and asked for change in copper for an eight anna piece, which the prosecutor offered to effect the exchange at 31 pice for the eight anna piece which the prisoner objected to, considering a discount of half a pice sufficient, and for the moment went away. Returning, however, almost immediately, he agreed to the prosecutor's terms and placing the eight anna piece in the hand of the latter, requested to have the stipulated number of pice. The prosecutor taking the coin to a lighted lamp for the purpose of examining it, noticed that it glittered and bore the word "pie" stamped on it. He immediately turned round to the prisoner and charging him with having brought a counterfeited coin, called to his neighbours.

The first witness to the fact, Mahomed Warish, No. 38, occupies a shop immediately adjoining that of the prosecutor, and while closing it for the night, saw the transaction take place precisely as the prosecutor described it.

The second witness to the fact, Sheik Beparree, No. 39, also occupies a shop with but one hut intervening between it and the prosecutor's house. He heard the call on the neighbours, and learning what had taken place, assisted in taking the prisoner to the thannah.

The witnesses, Nos. 43 and 44, hearing a noise at the prosecutor's shop hastened to it, learnt from the prosecutor what had occurred, and saw the counterfeit coin.

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The prisoner admitted before the darogah and the magistrate that he had offered the spurious coin to the prosecutor, but stated that he did so without being aware that it was a counterfeit. He had received the coin from some person just immediately before he applied to the prosecutor to exchange it for pice. His defence before the sessions court was precisely similar.

The *futwa* of the mahomedan law officer declares the prisoner guilty on both counts of the indictment, and liable to *tazeer*.

In this verdict, I concur. The magistrate in stating the grounds of commitment expresses his opinion thus—" The prisoner's denial is not credited because, *first*, he is unable to point out the party from whom he obtained it; *secondly*, because it is highly improbable that he should have been thus imposed on in open day, whereas the prosecutor at once discovered the counterfeit by lamp light ; and *thirdly*, because the circumstance of his wishing so soon to change into pice an eight anna piece which he had only obtained himself an hour or two previously, appears highly suspicious."—I adopt this reasoning as correct. Had the prisoner really received the coin from another party, in ignorance of its spurious character, he is not in circumstances of life where the receipt of eight anna pieces occurs so frequently as to render it embarassing to him to recall to mind from whom he got it. I am of opinion that he waited until dark for the purpose of passing off the coin on a shop-keeper; who in the hurry of closing his shop would probably not scrutinize it so closely as to detect the deception. I sentenced him as shown in column 12.

Sentence passed by the lower court.—Three (3) years' imprisonment without irons and a fine of fifty (50) rupees or, in default, to labor.

Remarks by the Nizamut Adawlut.—Present: Mr. H. T. Raikes.)—The prisoner in appeal repeats the defence he set up before the magistrate and sessions judge ; but I agree in the finding of the lower court, and see no reason to interfere with the revised sentence passed on the prisoner by the sessions judge as intimated in his letter to this Court, dated 2nd May instant.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT
versus
ESSER CHUNDER MANJEE.

RAJSHAHYE.

1853.

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Case of ESSER CHUNDER MANJEE.

Prisoner convicted of perjury and sentenced, to one years imprisonment, the case in which the perjury was committed being one of a trifling nature.

CRIME CHARGED.—Perjury, in having on the 30th November 1852, corresponding with 16th Aghun 1259, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the deputy magistrate of Pubna, that he saw Poorshed Kazee on the 4th or 5th Aghun 1259, corresponding with the 18th or 19th November 1852, assault the prosecutor, Prelhad Manjee, and plunder him of fish byorder of Premchand Ghose, defendant; and in having on the 5th March 1853, corresponding with 23rd Fagoon 1259, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the moonsiff of Pubna (Premchand Ghose being then and there present) to the effect that he did not hear Premchand Ghose order Poorshed Kazee to assault Prelhad Manjee on the 4th or 5th Aghun 1259, such statements being contradictory of each other on a point material to the issue of the case, and 2nd count, perjury, in having on the 5th March 1853, corresponding with the 23rd Fagoon 1259, deposed, under a solemn declaration taken instead of an oath before the moonsiff of Pubna (Premchand Ghose being then and there present) that he did not mention his (Premchand's) name, as the person who ordered Poorshed Kazee to assault Prelhad Manjee, when he gave his deposition before the deputy magistrate of Pubna on the 30th November 1852, corresponding with the 16th Aghun 1259, such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer—Mr. F. L. Beaufort, officiating joint magistrate of Pubna, Zillah Rajshahye.

Tried before Mr. G. C. Cheape, sessions judge of Rajshahye, on the 30th April 1853.

Remarks by the sessions judge.—The reason of this reference is, that I differ with the law officer, who convicts the prisoner of perjury.

The charge explains the case.

The question is simply, if the prisoner did, or did not name Premchand Ghose, as giving orders to beat and forcibly take some fish, in his first deposition made before the deputy magistrate, moonshee Wassiffuddeen, and having done so, if he denied doing so when the case was before the moonsiff of Khe-

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tooparah, who, as an assistant to the joint magistrate under Act XV. of 1844, disposed of the case.

The law officer holds it proved that he did, but in my humble opinion the evidence does not sustain the conviction.

First,—Because I consider there is no proof that he made the *first* deposition, or that he named Premchand Ghose, as giving the orders alluded to above, except the mohurrir who took down the deposition.

Secondly,—The mohurrir could not identify the prisoner, as the person who gave the deposition.

And lastly, one oath is not sufficient to convict of perjury, "as in such case there would be only one oath against another." (II Russell on crimes, page 637.)

It is true that another mohurrir, Prannath Bose, read the deposition over to the deputy magistrate, and the prisoner gave his assent to the same; but this mohurrir did not hear him name Premchand Ghose, neither could he identify the prisoner as being the person who assented to the deposition in which Premchand's name was mentioned.

Should the Court concur, I think the prisoner is entitled to his release, and as the whole was a very petty affair, as will be seen by the record herewith submitted, I hardly think the moonsiff acted judiciously in sending up the case to the joint magistrate, in order that the prisoner (and another) should be proceeded against for perjury.

The prisoner is in jail in default of bail, and has been since the 28th March last.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—I agree with the law officer in this case. The prisoner nowhere denies that he was the person who under his name, was examined before the deputy magistrate and the moonsiff. Proof by other parties, as to his identity as the person whose examination was so taken down by the mohurrir, Juggut Chunder Chuckerbutty, and acknowledged by him before the deputy magistrate on its being read out in his presence by the other mohurrir, Prannath Bose, is not requisite. He allows this throughout, but rests his defence on the allegation that *he did not* mention the name of Premchand Ghose, as that of the person who ordered the assault, in his first deposition before the deputy magistrate. The accuracy of the record of that deposition, and his own assent to it, before the deputy Magistrate as containing his evidence, are however well established by his own admissions and by the depositions of the two mohurrirs.

I convict the prisoner of perjury on both counts, and sentence him to imprisonment for one year with labour and

1853. May 17 Case of Esser Chunder Manjee.

irons. Had the case in which the evidence was given by him, been otherwise than of a trifling nature, I would have sentenced him still more severely. There can be no reasonable doubt of his guilt.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

NILMONEE MANJEE.

Rajshahye. 1853. May 17. Case of Neelmonee Manjee. Prisoner convicted of perjury and sentenced to one year's imprisonment, the case in which the perjury was committed being one of a trifling nature.

CRIME CHARGED.—1st count perjury, in having on the 30th November 1852, corresponding with 16th Aghun 1259, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the deputy magistrate of Pubna, that he saw Poorshed Kazee on the 4th or 5th Aghun 1259, corresponding with the 18th or 19th November 1852, assault the prosecutor, Prelhad Manjee and plunder him of fish by order of Premchand Ghose, defendant; and in having on the 5th March 1853, corresponding with 23rd Fagoon 1259, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath before the moonsiff of Pubna (Premchand Ghose being then and there present) to the effect that he did not hear Premchand Ghose order Poorshed Kazee to assault Prelhad Manjee on the 4th or 5th Aghun 1259; such statements being contradictory of each other on a point material to the issue of the case, and 2nd count, perjury, in having on the 5th March 1853, corresponding with 29th Fagoon 1259, deposed, under a solemn declaration taken instead of an oath before the moonsiff of Pubna (Premchand Ghose being then and there present) that he did not mention his (Premchand's) name, as the person who ordered Poorshed Kazee to assault Prehlad Manjee when he gave his deposition before the deputy magistrate of Pubna on the 30th November 1852, corresponding with the 16th Aghun 1259; such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case.

Committing Officer—Mr. F. L. Beaufort, officiating joint magistrate of Pubna, Zillah Rajshahye.

Tried before Mr. G. C. Cheape, sessions judge of Rajshahye, on the 30th April 1853.

Remarks by the sessions judge.—The reason of this reference is, that I differ with the law officer, who convicts the prisoner of perjury.

The charge explains the case.

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The question is simply, if the prisoner did or did not name Premchand Ghose, as giving orders to beat and forcibly take some fish, in his first deposition made before the deputy magistrate, moonshee Wassiffuddeen and having done so, if he denied doing so when the case was before the moonsiff of Khetooparah, who as an assistant to the joint magistrate under Act XV. of 1844, disposed of the case.

The law officer holds it proved that he did, but in my humble opinion the evidence does not sustain the conviction.

First,—Because I consider there is no proof that he made the *first* deposition, or that he named Premchand Ghose, as giving the orders alluded to above, except the mohurrir who took down the deposition;

Secondly,—the mohurrir could not identify the prisoner, as the person who gave the deposition.

And *lastly*,—One oath is not sufficient to convict of perjury "as in such case there would be only one oath against another." (II. Russell on crimes, page 637.)

It is true that another mohurrir, Prannath Bose, read the deposition over to the deputy magistrate and the prisoner gave his assent to the same, but the mohurrir did not hear him name Premchand Ghose, neither could he identify the prisoner as being the person who assented to the deposition in which Premchand's name was mentioned.

Should the Court concur, I think the prisoner is entitled to his release, and as the whole was a very petty affair, as will be seen by the record herewith submitted, I hardly think the moonsiff acted judiciously in sending up the case to the joint magistrate, in order that the prisoner should be proceeded against for perjury.

The prisoner is in jail in default of bail, and has been since the 28th March last, and is another witness in the same case as that in which Esser Chunder Manjee gave evidence and whose trial for perjury has this day been referred, and both cases will perhaps be laid before the same judge.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—I agree with the law officer in this case. The prisoner nowhere denies that he was the person who, under his name, was examined before the deputy magistrate and the moonsiff. Proof by other parties as to his identity, as the person whose examination was so taken down by the mohurrir, Juggut Chunder Chuckerbuttee, and acknowledged by him before the deputy magistrate on its being read out in his presence by the other mohurrir, Prannath Bose, is not requisite. He allows this throughout, but rests his defence on the allegation that *he did not* mention the name of Premchand Ghose, as that of the person who ordered the assault, in his first deposition before the

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deputy magistrate. The accuracy of the record of that deposition, and his own assent to it before the deputy magistrate, as containing his evidence, are, however, well established by his own admissions, and by the depositions of the two mohurrirs.

I convict the prisoner of perjury on both counts, and sentence him to imprisonment for one year with labor and irons. Had the case in which the evidence was given by him been otherwise than of a trifling nature, I would have sentenced him still more severely. There can be no reasonable doubt of his guilt.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND OTHERS

versus

HURDYAL SINGH (No. 24), THAKOOR SINGH (No. 25), BHINNUK SINGH (No. 26), DEBEE SINGH (No. 27), THAKOOR SINGH, 2ND (No. 28), SOBHUN SINGH (No. 29), NUKTOO SINGH (No. 30), GHEENA SINGH (No. 31), SHEEBDYAL SINGH (No. 32), BHUBEECHUN (No. 33), TEKA SINGH (No. 34), TEKA ROY (No. 35), AGHA SINGH (No. 36), NURIND ROY (No. 37), BHEEKAREE (No. 38), OUSAN SINGH (No. 39), HURAEE ROY (No. 40), SOBHEE ROY (No. 41), MITWA (No. 42), ETWAREE (No. 43), DOODRAJ SINGH (No. 44), AND PHEKA SINGH (No. 45).

BHAUGULPORE.

1853.

May 20. Case of HURDYAL SINGH and others.

The prisoners were convicted of riot in which one man was killed and others wounded. The case being one of an aggravated character, the principals were sentenced to fourteen years, and the others to seven years' imprisonment, with labor in irons.

CRIME CHARGED.—1st count, wilful murder of Nirput Singh deceased; 2nd count, accessaries before and after the murder of Nirput Singh, and 3rd count, riot in which Nirput Singh was killed and Inderjeet Singh, Burmha Roy, Thummun Roy and Isabraj Singh were severely wounded.

Committing Officer—Mr. W. Tucker, officiating magistrate of Monghyr.

Tried before Mr. R. N. Farquharson, sessions judge of Bhagulpore, on the 23rd April 1853.

Remarks by the sessions judge.—Prisoners all plead *not guilty.*

Prisoners are all maliks of Wulleepore; complainants maliks of Puthawan; the deceased Nirput was the managing puteedar of the Puthawan maliks. The field, which appears to have been the cause of disturbance, lies between the two mouzas of Puthawan and Wulleepore. The land is deeara alluvion and is, I believe, a part of a Government mehal which has been erroneously marked out by the survey as within the Wulleepore property, hence the attempt of the Wulleepore maliks to oust

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those of Puthawan, whose possession I believe to have been upheld by the collector, but this does not appear in evidence, nor is it material to the case.

It is charged against the prisoners, that they came with a large body of some 500 men, to cut the crops within the boundary of Puthawan; that on being remonstrated with by Nirput Sing deceased and his party, they set on them with swords and *lattees* and wounded some of them severely, Nirput Sing the most so; that they then carried off these wounded men to their own village of Wulleepore; that in the dead of the same night they carried off Nirput with the charpoy he was lying on, and that nothing further was heard of him till his head and parts of his body were discovered in the bed of a wet *nullah*, about a coss from Wulleepore, and the other two wounded men, witnesses 2 and 3, were towards morning of the same night placed on horseback, taken to a certain point, near their own houses, and released. Witness No. 1, had escaped at an earlier part of the evening. The riot took place, on the 15th of February, the discovery of the remains was made on the 17th idem. The head was identified as that of Nirput by the features which were uninjured. Of the portions of body sent into the sudder station, the head alone afforded means of ascertaining the cause of death. The civil assistant surgeon, witness No. 52, distinctly swears to the death of Nirput having been occasioned by blows on the head inflicted during life, which fact he is able to certify from the congealed blood found between the scalp and the skull above fractures of the latter. He is of opinion that the wounds causing death were inflicted by some blunt instrument, but thinks it possible they may have been caused by the back or hilt of a sword. The remains of Nirput were discovered through some of the village boys, witnesses Nos. 48 and 49, who had heard talk of their being hidden in the Silahee *nuddee;* this *nuddee* appears to be rather a small *jheel* where the remains were discovered by men, wading about the mud feeling with their feet.

It is clearly proved by the concurrent testimony of seven eye-witnesses, Nos. 1, 2, 3, 4, 5, 6 and 8, that the affray took place as described; that all the prisoners were concerned in it and that the four wounded men Nirput, Inderjeet, Burmha and Thummun, were carried off to Wulleepore. It is attempted to prove in evidence (witnesses 1, 2 and 3), that Nirput, deceased, was in his senses while these four were in confinement at Wulleepore, and that prisoners, Thakoor, Bhimuck and others unknown, looking on him as a principal, while the other wounded men were regarded only as ryots murdered him, Nirput, as an obnoxious enemy, releasing the other three. This, however, is not in my opinion, sufficiently clear and from

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the medical evidence of Doctor Collins and general facts of the case, I am inclined to believe that Nirput received the injuries, causing death in the affray, as described in the prosecution, but that dying when removed to Wulleepore, his body was cut up and buried in the wet mud whence parts were extracted by the police. There can be no doubt of the affray, of the carrying off of the four wounded men to Wulleepore, of the death of Nirput, of his body having been cut up and concealed and of the identity of his head with that found in the Silahee *nuddee*. The only question that remains is, was his death caused by wounds received in the affray, or was he cruelly murdered in cold-blood in the village of Wulleepore?

The prisoners deny any participation in, or knowledge of the affair and all plead an *alibi* of Nos. 25, 26, 28, 33, 27, 29 and 30, being witnesses in support of the same. Prisoner, Hurdyal, No. 24, produces a document registered in Monghyr, on the 16th of February 1853, but attested by him seemingly, on the 15th, the very day of the murder, and many witnesses to prove that they saw him on that day in Monghyr at the sudder ameen's cutcherry and elsewhere. It is not impossible that these witnesses may, to a certain extent, speak the truth, but as the affray is said to have taken place at ten in the morning, and prisoner could easily have come to Monghyr in a small boat in time to establish the fact of his being there at four P. M.; their testimony can in no way invalidate that of the witnesses for the prosecution, who all swear positively to Hurdyal being present and giving orders for the attack. Wulleepore is distant from Monghyr by land about ten *coss;* prisoner might have gone up on the night of the 14th and returned by four P. M. of the 15th; Hurdyal was apprehended in Monghyr, on the 18th February.

The witnesses for the other prisoners are in no one instance precise enough to establish the *alibi* set up.

The jury bring in a verdict of guilty on the 1st and 3rd counts against Hurdyal Thakoor and Bhinnuk, and against Nos. 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44 and 45 of guilty on the 2nd and 3rd counts of the indictment, in which I concur

The possibilities of this case are these:

First,—That Nirput was wounded on the field by the swords of Thakoor and Bhinnuk, and carried off with the others to Wulleepore without any injuries immediately affecting life; that he was there murdered in cold-blood by heavy blows on the head and his body afterwards hacked, cut up and concealed.

That Nirput was mortally wounded by *lattees* as well as swords in the affray and carried off with the three others lest any of

them dying of their wounds, the murder might be brought home to prisoner by deposition made before death or medical testimony elicited afterwards. That he died, of his wound in the prisoner's village and was cut up and made away, with a view to elude the ends of justice.

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The evidence to the first of these suppositions is incomplete and doubtful. It is sworn that the main blows received by Nirput in the affray were from swords. It is proved by medical evidence, that though death was caused by fractures from blows of some heavy blunt instrument, there were also many cuts on his head, but whether these were given before or after death is not certain. Supposing that they alone were the wounds received by Nirput on the field, he may perhaps have been, in case to abuse his captors and shew other signs, of being in his senses as sworn to by Inderjeet, Burmha and Thummun. Then the two fractures, causing insensibility and death, must have been inflicted in cold-blood with deliberate intent to murder, but by whom they were dealt, does not appear. Bhinnuk and Thakoor, prisoners Nos. 26 and 25, however, are sworn to by witnesses Nos. 2 and 3, as those in whose custody he was last seen.

The second supposition is the most probable, the blows dealt on Nirput in the field were doubtless many besides those principally sworn to, as received at the hands of Thakoor and Bhinnuk. The *lattee*, or other heavy instrument blows causing death may have been dealt without attracting individual attention. The evidence of Burmha and Thummun, relative to the murderous intention of prisoners, expressed within their hearing during their detention in the village of Wulleepore, on which they partly found the accusation of the cold-blooded murder of Nirput is not quite trustworthy, no mention having been made of so important a point in their deposition before the magistrate, neither did they there allude to Nirput's abuse of his captors during their imprisonment in Wulleepore.

On the whole and with especial reference to the motives and habits of the people, I am more inclined to credit the supposition that Nirput met with his death from blows inflicted on him by Thakoor, Bhinnuk and others, unknown in the affray instigated by Hurdyal, and that his body was by them and their confederates cut up and buried to evade the ends of justice. Under the circumstances attending this murder, and the doubt that hangs over prisoners of its being cruel, cold-blooded and deliberate, and as an example much wanted to put down these violent affrays, I should perhaps recommend capital punishment of the principal offenders; there is a difficulty, however, in fixing the actual murder on any individual, and where so many were concerned, all must have some benefit from the doubt, I would

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suggest, therefore, that Hurdyal Sing, as the instigator, and Thakoor and Bhinnuk, as principals, be transported beyond seas for life; and that prisoners from No. 27 to No. 45, all of whom are fully proved to have been present in the affray, be imprisoned with labor and irons for seven years. The attempt of Hurdyal Sing to prove an *alibi* goes to make the case stronger against him, it being thence evident that the matter, as far as the riot is concerned, was pre-meditated and pre-arranged. There is this, however, to be said for Hurdyal, that though taking a decided lead in the riot, he was not present at the village afterwards and may thus, though guilty of the murder of Nirput, if occurring in the manner I have surmised, be acquitted of having taken a part in mangling the murdered man's remains: for my part, however, looking on the principal movers of these affrays as by far the most guilty parties concerned, I cannot withdraw any part of my recommendation for his punishment and mention the palliative circumstance merely as to show that it has not been carelessly overlooked.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—There is no proof of wilful and deliberate murder in this case. The witnesses who deposed at the trial to having heard certain of the prisoners discussing the expediency of putting Nirput Sing to death, and having seen them carry him off, apparently with that intention, made no mention of this either to the darogah, or before the magistrate. Their omission of circumstances of such importance, is fatal to the credibility of their statement upon this point. The man's death is fully and naturally accounted for, by the injuries which he received when first attacked and struck down, and there can be little doubt that the dismemberment of the body was resorted to, with a view to concealment.

The verdict of the jury is inconsistent. They find Hurdyal, Thakoor and Bhinnuk guilty on the 1st and 3rd counts, and the others on the 2nd and 3rd counts; but the 1st and 2nd counts refer solely to wilful murder, whereas the 3rd count refers to a charge of much less enormity, namely, riot, in which one man lost his life and others were wounded, but in which no deliberate or pre-meditated intention to kill is charged.

The evidence for the defence is insufficient to shake the consistent and overpowering proof on the side of the prosecution, I convict the whole of the prisoners on the 3rd count, and as the case is one of an aggravated character, although there is no reason to believe that the rioters went forth with the design of causing the death of any person, I sentence the three principals Hurdyal, Thakoor and Bhinnuk to imprisonment for fourteen years, and the other prisoners to imprisonment for seven years, all with labor in irons.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

NUSHEERAM GHOSE.

NUDDEA.

1853.

May 21.

Case of NUSHEERAM GHOSE.

Conviction and sentence, passed on a prisoner charged with knowingly receiving and having in his possession plundered property, acquired by river dacoity, upheld in appeal.

CRIME CHARGED.—1st count, dacoity on the boat of the plaintiff, Ramprotab Singh, churundar's master, in which property to the value of rupees 562-12-9 was plundered, and 2nd count, knowingly receiving and having in his possession plundered property acquired by the above dacoity.

CRIME ESTABLISHED.—Knowingly receiving and having in his possession plundered property acquired by dacoity.

Committing Officer—Mr. George Hewett, deputy magistrate, with full powers of magistrate of Cutwa, zillah Nuddea.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 3rd March 1853.

Remarks by the sessions judge.—This was a case of river dacoity which occurred at the commencement of last year, in which two persons named Gooroochurn Harree and Nusheeram Chundal were convicted in August last, of receiving and having possession of plundered property knowing it had been obtained by river dacoity. This prisoner had then absconded, and has only lately returned to his home and been arrested.

The following is a statement of the case; the prosecutor was the servant of an Up-Country merchant, and was in charge of a cargo of piece goods, umbrellas and hard-ware, &c.,-and when he reached Jhowdangah he stopped for the night. His boat was attacked by dacoits and a large portion of the property was carried off. A portion of the property the prisoner Nusheeram Chundal, formerly convicted, and Nusheeram Ghose, now found guilty, and two others not caught, offered for sale openly and without any concealment, and on the responsibility of Gooroochurn who was a village chowkeedar, saying that they had imported it from Calcutta. The prosecutor proceeded to Augurdeep and gave information at the thannah, and the darogah instituted enquiries at Jhowdangah and its vicinity, when he found that the prisoners had been disposing of a large quantity of property similar to that which the prosecutor had been robbed of. He accordingly applied to the purchasers who instantly gave up 177 umbrellas purchased from the prisoners. The prisoner who is the subject of this report, neither offered any defence nor evidence in exculpation.

Sentence passed by the lower court.—Seven (7) years' imprisonment, and two (2) years, in lieu of corporal punish-

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GHOSE.

ment being in aggregate nine (9) years, with labor in irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The Court see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT AND RAMCHAND MANJEE

versus

ONNO BEWAH CHASANEE.

WEST BURDWAN.

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Case of
ONNOO BEWA
CHASANEE.

There being reasonable doubts as to the free and voluntary nature of the confession of the prisoner, who was charged with being an accomplice in murder, she was acquitted.

CRIME CHARGED.—1st count, accomplice in the wilful murder of Deenoo Manjee, and 2nd count, accessary before the above fact.

Committing Officer—Moulvee Gollam Ushruff, deputy magistrate of Boodbood, zillah West Burdwan.

Tried before Mr. P. Taylor, sessions judge of West Burdwan, on the 2nd May 1853.

Remarks by the sessions judge.—The prosecutor's account of this case, when first examined by the darogah was, that his brother and he came home in a cart from the moonsiff's cutcherry at Gopalpoor, at about 8 o'clock in the evening of the 12th Poos (25th December last); that, after eating their supper, both went to sleep; that, about 10 o'clock, the deceased asked his mother to bring him some oil, to rub upon his leg; that when the same was brought as per his request, he placed it by his bedside and told deponent to go to sleep, but that he was going out for a short time, and would return soon; that when deponent went out, a little before day break, for a necessary occasion, he found the bed of deceased empty; that he thereupon went and asked the chowkeedars and villagers, including the prisoner, whether they had seen him, but without result; that he afterwards enquired for him in other villages, with similar ill success; that he then recollected that one Rambisto and the prisoner were enemies of the deceased, in consequence of his having beaten the said Rambisto, for his gallantries with the prisoner, and turned the latter out of her caste, besides having himself had connexion with her, about six or seven days before his disappearance, and that it was therefore possible that the two might have murdered him, and that upon this (three days after the disappearance of the deceased) he communicated his suspicions to the darogah. The same deponent's deposition before this court, shows, that that officer immediately came to his village and, after questioning Rambisto and the prisoner commenced search for the body; that about four days after

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the darogah's arrival, deponent with witnesses 9 and 11, and others, found the corpse of the deceased buried in sand, under the stream of the Ajye Nuddee, about a coss distant from deponent's village; that the body was naked and fresh, with a scratch on the back and a cut across the throat; that notice was sent through a chowkeedar to the darogah, who came and made inquest and thereafter questioned the prisoner, who at once confessed being accessary to the murder of the deceased before the fact; that Rambisto Ghose and Koylas named by her as principals, were taken up and *challaned*, but subsequently released by the deputy magistrate, for want of proof and that the deceased had a *gillap*, *mirzaee* and *dhotee* on, when he left *home* on the night of his disappearance, which were not found with the body.

The foujdaree and sessions depositions of the prosecutor were nearly to the same effect as the mofussil one up to the visit to the thannah, but he added on both occasions, that when his brother and he were coming home on the *suggur* or cart, in the evening, they saw the prisoner under a tree by the road side; that his brother got down and commenced conversing with her; that the deponent left him there, and went home alone, and that afterwards, every thing occurred as before stated at the thannah.

The confession of the prisoner in the mofussil, repeated in the same terms in the deputy magistrate's court, was to the effect, that Rambisto and his *summundee*,* or brother-in-law, Koylas, had told her to decoy the deceased to her house, in some way, as they wished to kill him; that she consequently went down to the road side on the evening of the deed, and made an assignation with the deceased; that Rambisto and Koylas, thereupon, hid themselves with two dark young men whose names she did not know, in a sugar-cane press house, a short distance from the residence of the deceased; that when he reached it, in his way to her hut, the said persons rushed out upon him, bound and gagged him with cloths, and carried him off into the jungle, to the south of the village, and that after that she saw nothing.

All the rest of the evidence had reference to the enmity that existed between the deceased and the prisoner, and her friends and paramours, the apprehension of the prisoner, the sooruthal, &c., but there was not another atom of circumstantial evidence, bearing upon the actual commission of the crime, and the complicity of the prisoner in it.

The deposition of the civil assistant surgeon showed, that there was another wound on the head of the deceased, under the upper part of the ear, which had fractured the skull and which was, in itself, sufficient to have caused his death.

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Before the sessions court, the prisoner repudiated both her confessions and affirmed that she had been induced to make them by threats and severe treatment, on the part of the police, but not one of her five witnesses would allow that he knew of any thing of the kind.

The *futwa* of the law officer convicted her, on both counts of the indictment, on violent presumption, based on her own repeated confessions and her failure to substantiate her defence, and declared her liable to *acoobut.*

I do not agree with this futwa, and recommend that the prisoner be acquitted and released.

I do so, because I consider it highly probable that her mofussil confession was dictated, and that her foujdaree one was a mere repetition thereof, from memory, superinduced by the threats or cajolery of the police.

The court will not fail to remark, that the substance of the confessions is easily commissible to memory, and that they contain mention of the evening conversation with the deceased, on the road side, which was not in any way alluded to by the prosecutor, in his thannah deposition, though afterwards mentioned in the deputy magistrate's office, and sessions court.

As the prisoner was a weak and friendless widow, and her reasons for enmity against the deceased were known to the whole village, the police could have had little difficulty in persuading her to make a confession, like that given in the mofussil, in which she merely implicated herself as accessary before the fact, and to repeat the same before the officiating joint magistrate.

Their arguments in such a case would, of course, be that as no one else in the village with the exception of the prisoner and her paramour, could be suspected of the murder, she had better say that the latter did it with her knowledge, and that if she took care not to make herself a principal, she would escape scot free.

It is well known that repeated confessions are often thus obtained by the police.

The fact of the body having been found quite fresh, in the Ajye river, seven days after the disappearance of the deceased is against his having been murdered on the night of the 12th Poos, as the civil assistant surgeon states, that a corpse buried in sand and water for seven days, in the month of December, must have become putrid.

If the deceased was actually bound, gagged and carried off, as stated by the prisoner, where was the necessity for the deadly wound, found by the civil assistant surgeon behind the ear? The existence of this wound tends to su-

perinduce the belief that the confession is not genuine, and that the deceased must have been knocked down by some person, lying in wait for him with a heavy blunt weapon, who, subsequently finished his work by cutting his throat.

I have ordered the officiating joint magistrate to admit the prisoner to bail, until the decision of the court shall be received.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—In his thannah deposition the prosecutor not only omitted all mention of himself and the deceased having met the prisoner, and the latter having held a conversation with her on the very night in which his brother disappeared; but he added in distinct terms, that he could not say whether any one had that night come for him, or induced him to leave home. It is clear that he could not have omitted a fact so material, and one which would so immediately have put the police on the right clue, had the meeting really taken place. There is every reason therefore to believe that it never did take place, but his mother in her deposition of the following day, said that she had heard from the prosecutor that tho meeting had taken place; and the confession accordingly runs in the same strain. The prosecutor endeavours to get over the difficulty created by this palpable contradiction by saying at the trial that he did mention the circumstance to the darogah, and that he did not take it down, which, of course, is not to be credited, anxious as the darogah was to get hold of some one implicated in the murder. I concur with the sessions judge in doubting the genuine character of the confession; and giving her the benefit of the doubt, I acquit the prisoner, and direct her immediate release.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND BHYRUB CHUNDER *versus* RAI CHAND CHUNG (No. 10), AND RAJ CHUNDER CHUNG (No. 11).

BACKERGUNGE.

1853.

May 23.

Case of RAI CHUND CHUNG and RAJ CHUNDER CHUNG.

There can be no conviction for murder when there is no proof that the missing man is really dead. Prisoners convicted of theft on strong presumption; property of the missing man being found in the possession of one of them, and neither of them able to account for the way in which it came into their possession, or for their suddenly abandoning the owner who had hired the boat in which the property had been placed.

CRIME CHARGED.—Nos. 10 and 11 theft attended with the murder of Rajmohun Shaha. No. 10, receving and detaining the property knowing it to have been stolen.

Committing Officer—Mr. W. M. Beaufort, magistrate of Zillah Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 2nd May 1853.

Remarks by the sessions judge.—The deceased was a small merchant. Having some debts to collect in different parts, he hired a boat at Nulchitty about the 10th or 12th Poos last. The boat belonged to the prisoner No. 10, Rai Chand Chung, and the prisoner No. 11, Raj Chunder was the dandee. It was hired after Haran, witness 1, assured the deceased that he knew the prisoners and could answer for their respectability. On the 16th Poos the deceased started off and gave out that he should return in three days. On the 17th Poos he collected some money at Kaleegunge; on the 18th he did the same at Bootra. After this he was not seen again alive by any one. His protracted absence appeared unaccountable to his relatives but they were under no apprehension till towards the end of Poos, the prosecutor saw the body of a man floating in the *khall* opposite Nulchitty, and he at once became strongly impressed with the fear that the body was no other than that of his brother, and communicating his fears to Haran, witness No. 1, and begging that he would immediately proceed to find out the boatmen, he went himself and informed the Nulchitty darogah of the state of the case.

The body was in a putrid state and much swollen, and as identification was inpossible, nothing was done to it by the police. The prosecutor says the body looked as if death had taken place ten or twelve days before, and he says that the flood tide comes into the *khall* opposite Nulchitty from Bootra.

Witness No. 1, Haran, followed the prisoners to Pubna where they lived. Finding them at home he lodged an information against them before the darogah of Muttrapoor Thannah. On the apprehension by him of the prisoners they both similarly confessed that on landing the deceased at Bootra *haut*, they clan-

destinely opened the boat and left him behind, carrying away his property and cash, of which prisoner No. 10 restored a tussur *dhootee*, two common bags and ten rupees.

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Before the magistrate the prisoner Rai Chand denied the theft, claimed the property as his own, and adhered to his first statement that he landed the deceased in Bootra *haut* and had seen nothing of him since.

Raj Chunder in his answer before the magistrate admitted the theft of the property, and said that the other prisoner told him after leaving Bootra, that he had killed the deceased, whereupon he, Rajchunder, began to complain of the probable consequences when Rai Chund told him to hold his tongue, and that if he divulged the matter to any one he would be the death of him and of his old mother, and that for fear he had said nothing of it.

The *protanto* confessions of the prisoners, both before the police and the fouzdaree, were verified by the attesting witnesses.

Three witnesses proved the finding of the property on the person and in the house of prisoner No. 10, and the same was identified by three other witnesses as property belonging to the deceased.

The witnesses from 10 to 23 established by their evidence that the deceased left home on the 16th Poos; that he collected money on the 17th at Kaleegunge, and that he collected some more at Bootra on the 18th, and that he embarked on board the boat he came in from Bootra *haut*, and was seen by witnesses till the boat got into the big river after which he was not seen or heard of, till the facts related in this case came to light.

Prisoner No. 10, before the sessions adheres to his fouzdaree statement, that he left the deceased behind at Bootra.

The prisoner No. 11 repeats the same admission as he made before the magistrate.

The law officer finds the prisoners guilty on presumptive evidence, of being accomplices in the wilful murder of the deceased, as well as to the theft of property and detaining it knowing it to be stolen.

The evidence, direct and presumptive, might be deemed sufficient to bring home the charge of wilful murder to the prisoners; but such not being the charge upon which they have been called upon to plead, they cannot be convicted of it. I convict them of theft attended with murder, and recommend a sentence of imprisonment for life in transportation.

The witnesses who saw the deceased embarked on board the boat at Bootra *haut* are not able to say, that the prisoners at the bar were the men on board that boat. But the prisoners admit that they brought the deceased to Bootra, and if the

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deceased had been obliged by their deserting him at Bootra to hire another boat, the witnesses could not have failed to have become aware of that fact. The boat that the deceased left on Bootra can, therefore, be no other than the one in which he had been conveyed to Bootra. It is for the prisoners to say what became of him after they received him on board; this they cannot do, unless they admit the murder, for that murder has been committed, there can I should think be no manner of doubt.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The sessions judge and the law officer find the prisoners guilty of theft and murder; but there can be no conviction for murder, as there is no proof that the missing man is really dead. He was last seen when embarking on board his boat at Bootra, which was manned by the two prisoners. This entirely falsifies the statement of Rai Chund in his fouzdarry defence, that on hearing of his brother's death he immediately loosed the boat and left Bootra without waiting for the missing man; and also negatives that of Raj Chunder to the effect that Rai Chund murdered the man on shore before leaving Bootra. The discovery of the property in the possession of Rai Chund and the inability of the prisoners to account for it, or for their so suddenly returning home from Bootra, are sufficient to convict them on strong presumption of the theft. As they were at the time the hired servants of the person whose property they stole. I sentence them to two (2) years' imprisonment with labor and irons.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

JETOO ROY.

BHAUGULPORE.

1853.

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Case of JEETOO ROY.

Conviction of a prisoner, charged with attempt at bruglary with violence, confirmed in appeal, and sentence of fourteen years' imprisonment, upheld with reference to the prisoner's previous bad character.

CRIME CHARGED.—Attempt at burglary with violence.

CRIME ESTABLISHED.—Attempt at burglary with violence.

Committing Officer—Mr. R. O. Heywood, magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 22nd February 1853.

Remarks by the sessions judge.—Prisoner pleads *not guilty.* This was an attempt at burglary by an old offender. Prosecutor went out from the verandah where he was sleeping, into the road about midnight for a certain purpose, when he saw a man digging a *sind* into his wall and several others standing by, he grappled with them seizing two by the hair of their heads, one bit his fingers and escaped with other companions, but the man seized by prisoner's right hand was held till assistance came. This man, the prisoner, had a sword in his hand, with the pommel of which he struck prosecutor on the face, the blade was not drawn. Witnesses Nos. 1, 2, and 3 hearing prosecutor's cries then came up and completed the capture; they depose consistently to having found prosecutor struggling with prisoner having hold of his hair, and his (prisoner's) sword held down by prosecutor's foot. Prosecutor swears to having been struck several blows with *lattees* by the thieves who made off, but this is not corroborated by the evidence. It is proved however that he was wounded in the face seemingly by the pommel of prisoner's sword; the attempt at burglary is proved by the half finished *sind* sworn to by witnesses Nos. 1, 2, and 3; the mofussil confession is merely an acknowledgment of being on prosecutor's premises at the time as set forth in the defence.

Prisoner states that he had been drinking and had merely sought shelter in an out-house of prosecutor's; that prosecutor discovering him there raised a cry of thieves and beat him severely; he acknowledges having been once imprisoned for fourteen years in a dacoity case and four years for theft, since when he has been one year out of jail; he owns the sword produced in court as his property.

Prisoner calls four witnesses as to character whose testimony affords nothing in his favor.

The jury find a verdict of guilty in which I concur.

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The prisoner is a hardened offender; the instances of imprisonment acknowledged by himself are borne out by the records of this court. He was imprisoned in the Bhaugulpore jail for fourteen years with thirty ratans for dacoity from May 1832, and again for four years with labor and irons for burglary and theft from September 1847.

He is convicted of an attempt at burglary with violence, and in consideration of his former offences, is sentenced to fourteen (14) years' imprisonment with labor in irons in banishment to another zillah.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The proof is complete, and the conviction good. The sentence is severe; but the prisoner is evidently a hardened offender, and such an example is probably required. The appeal is rejected.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

KISHORE MULLICK

versus

JOTEE NAIK (No. 6), GOCOOL NAIK (No. 7), ROOPA NAIK (No. 8), BHUGOBAN PATUR (No. 9), BINUD NAIK (No. 10), AND JUGGERNATH NAIK (No. 11).

Midnapore. — 1853. May 23. Case of Jotee Naik and others. Five prisoners convicted of aiding and abetting in dacoity attended with murder and wounding, sentenced to transportation for life.

Crime Charged.—Dacoity attended with murder and wounding in the house of prosecutor, by which wounding death of prosecutor's father ensued, and his (prosecutor's) brother, witness No. 1, was severely wounded as well as himself; secondly aiding and abetting in the above; prisoners Nos. 6, 7 and 8, on a 3rd count, with knowingly receiving and keeping property acquired by the above crime.

Committing Officer—Mr. V. H. Schalch, magistrate of Midnapore.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 2nd May 1853.

Remarks by the sessions judge.—It is in evidence that the house of the prosecutor was burglariously entered, on the night of the 28th February, by a gang of dacoits, who violently assaulted the prosecutor, his brother, Pechul Mullick, witness No. 1, and Damoo Mullick, his father. The skull of the latter was fractured by the blow of a stick from the effects of which he expired, before the police arrived at the spot where the robbery occurred.

The prosecutor in his deposition in the mofussil, swore to the identity of the prisoner No. 6, Jotee Naik, and No. 7, Gocool Naik, the former of whom struck him a violent blow

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on the head with a bamboo, the marks of which are still apparent.

The inquest held in the mofussil proves that the body of the deceased, Damoo Mullick, exhibited marks of some severe blows on the head, inflicted with a blunt weapon, and from the evidence of the sub-assistant surgeon of the station, it appears that deceased met his death from the blow of a stick or bamboo, such as were shown to witness in court, causing a compound fracture of the parietal bone of the skull and extravasation of blood on the brain.

All the prisoners confessed before the darogah and the magistrate. Before this court, they plead not guilty, and an *alibi*, which they fail to substantiate. I attach every credit to prosecutor's statement of his recognition of the prisoners, Jotee Naik, No. 6, and Gocool Naik, No. 7. These parties both resided in his village till a short time ago, and their persons were, therefore, very familiar to him. He mentioned their identity to the police burkundauze, Buseerooddeen, who arrived at the spot very shortly after the robbery had taken place, and he reported their names to the thannah early the following morning, which report was followed up by their immediate arrest. The confessions are clear, circumstantial and consistent, and there is no reason to suspect them, corroborated as they are by the evidence, of having been made under the influence of fear or promises of any kind. The statements of prisoners, Nos. 6, 7, 8 and 9, vary a little from those of prisoners Nos. 10 and 11. The former accuse the latter of being the prime movers and actual perpetrators of the robbery; the latter make like accusations, adding that Jotee Naik was the party who struck Damoo, and that Damoo called out Jotee's name at the moment he was struck.

The probabilities are that Jotee Naik was the instigator and chief mover of the robbery, as from the testimony of some of the witnesses, it would appear that he resided a short time ago in the same village with deceased, and deserted it, leaving a claim, which deceased had against him, unadjusted, and regarding which a quarrel had taken place between them. Revenge, more than the love of gain, certainly seems to have influenced the dacoits, as no determined resistance was offered to account for the brutal assault that was made on all the male inmates of the house, and property to the value of two rupees six annas only, was taken away.

Jotee Naik, No. 6, has fallen a victim to dysentery since this trial commenced, and it is, therefore, now almost needless to speculate what part he took in the crime on which he was arraigned. The evidence against him is stronger than against his accomplices, that he inflicted the fatal blow on the head of

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Damoo Mullick. At all events the latter are entitled to any doubt there may be on the subject. Of their complicity, however, in the robbery and murder, as aiders and abettors, there can be no doubt whatever, and short of death, they have, in my opinion, incurred the severest penalty the law can inflict, I accordingly recommend that they, Gocool Naik, No. 7, Roop Narain, No. 8, Rugoobur Pattur, No. 9, Benud Naik, No. 10, and Juggernath Naik, No. 11, be sentenced to imprisonment for life in transportation beyond seas.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The confessions of the prisoners sufficiently identify them as members of the gang, which attacked and plundered the prosecutor's house on the night in question; and the evidence of the prosecutor and his brother, and of those who visited the premises afterwards, satisfactorily proves, that Damoo Mullick, the father, was killed, and the prosecutor and his brother wounded by the dacoits.

The sessions judge reports that Jotee Naik, No. 6, died in jail after the trial; and he convicts the remaining prisoners of being aiders and abettors in the robbery and murder, and recommends that they be sentenced to transportation for life beyond sea. He states that he believes from certain circumstances detailed by the witnesses, that Jotee Naik organised the gang and planned the robbery, and that he also struck the blow which killed the deceased. He also observes, that the robbers appear to have been actuated more by revenge than a love of gain, as no determined resistance was offered to account for the brutal assault that was made on all the male imnates of the house, and property to the value of only two rupees six annas was taken away. In this view I concur; and the only extenuating circumstance I can see in favor of these prisoners is, that the murdered man did not fall by their hands: in all other respects I look upon them as equally guilty with the principal offender. I, therefore, convict the prisoners Nos. 7 to 11, as aiders and abettors in dacoity attended with murder and wounding, and in concurrence with the recommendation of the sessions judge, sentence them to transportation for life beyond sea.

PRESENT :
H. T. RAIKES, Esq., *Officiating Judge.*

EMAMUDDEEN
versus.
CHOONI.

TIPPERAH.

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Prisoner charged with cattle-stealing, acquitted in concurrence with the opinion of the sessions judge, in opposition to the futwah of the law officer. The prisoner having found the cattle trespassing in his field had secured them in his own cow-house, and on his refusing to give them up until he received compensation for the damage done to him, he was charged with stealing them.

CRIME CHARGED.—1st count, theft of a bull belonging to the prosecutor valued at rupees 5, and 2nd count, receiving and retaining in his possession a bull, valued at rupees 5, obtained by the above theft, knowing it to have been such.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr H. C. Metcalfe, sessions judge of Tipperah, on the 30th April 1853.

Remarks by the sessions judge.—The prisoner was charged with two thefts on the same day, the 5th of March last, in the one instance, of a bull, and in the other, of two bullocks. The present report refers to the first alleged theft.

The prosecutor missing a bull from his cow-house on the morning in question, went in search of it, believing it to have been stolen. The animal was found about mid-day of the same day, tied up in the prisoner's cow-house, with the two bullocks missed by the prosecutor in the other case. The prisoner at once informed the prosecutor that the animals had trespassed on and damaged his chili field, and that he had consequently detained them.

The prisoner was now charged with theft by the owners of the cattle and taken to the thannah, where he made the same statement to the darogah that he had done to the prosecutor, denying the theft and alleging as the reason of his having detained the bull and bullocks, their having damaged his chili crop. The magistrate directed, that before enquiry into the charge of theft the prisoners's character should be ascertained. The darogah reported favorably as regarded the prisoner's not associating with bad characters, or indulging inexpensive habits, adding that he was proprietor of a small talook, which, however, even with the assistance of his son's labor, the darogah thought was insufficient to afford support for twelve individuals, the number of his family. The darogah added that the prisoner had before been convicted on more than one occasion.

The report on the whole appears to me rather favorable than otherwise to the prisoner's present character and habits, but he was ultimately sent in on the present charges of theft, and committed by the magistrate for trial before the sessions court.

The amount of evidence against the prisoner is that the

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cattle were found tied up in his cow-house by the witnesses, Rowshun, chowkeedar, No. 84, Rumeezoollah, chowkedar, No. 80 and Bura Gazee, No. 81. The prisoner told them that he had detained the animals because they had done harm to his chili field, and that he would not release them until the damage was made good. The chowkedars, however, thought proper to view the case as one of theft, and took the prisoner off to the thannah.

The prisoner pleaded not guilty and repeated in his defence that he had no intention whatever of stealing the cattle, but that discovering them trespassing in his chili field, he had tied them up in his cow-house. He called six witnesses who spoke distinctly to the prisoner's field having been trespassed on by cattle on the morning in question.

The Mahomedan law officer found the prisoner guilty, and declared him liable to *tazeer*.

In this finding I cannot concur, conceiving that any intention on the part of the prisoner to steal the cattle, is far from proved, and that on the contrary there is every reason to believe his own explanation of the circumstance to be true.

The prosecutor and prisoner live at no great distance from each other, while the house of the prosecutor's first cousin is actually close to that of the prisoner. If the latter had any intention to steal the cattle, he certainly would not have tied them up in his own cow-house, where the prosecutor's relation could scarcely fail to see them. That he has been in earlier life a bad character is undoubted, but he is now an aged man and appears to have adopted of late, a quiet and blameless mode of living. His previous bad charatcer would doubtless have weighed against him after conviction, in assessing the degree of punishment he would have merited, but I do not consider that it justifies a charge of theft based on such slender materials as these two cases afford.

Being of opinion that the prisoner impounded the cattle for trespass without the remotest purpose of theft, I would not only recommend his release, but would observe that his commitment at all was unnecessary.

For *Remarks by the Nizamut Adawlut.—Vide* following case.

PRESENT:

H. T. RAIKES, ESQ., *Officiating Judge.*

BUKSH MAHOMED

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See preceding case.

CRIME CHARGED.—1st count, theft of two bullocks, belonging tot he prosecutor, valued at rupees 11, and 2nd count, receiving and retaining in his possession two bullocks, valued at rupees 11, obtained by the above theft, knowing them to have been such

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 30th April 1853.

Remarks by the sessions judge.—This case precisely resembles the preceding and forms the second of the two alleged to have occurred, on the 5th March 1853.

The Mahomedan law officer convicts the prisoner. For the reasons set forth in my report of the case Emamuddeen *versus* Chooni, I would acquit him.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner was convicted on two charges of cattle-stealing in separate calendars. The case has been referred on a difference of opinion as to prisoner's guilt in both cases between the law officer and the sessions judge. The *futwa* states, that the evidence of the witnesses generally, and the fact of the cattle being found in the prisoner's possession, his previous bad character and the discrepancies observable in the evidence of the witnesses for the defence, altogether afford presumptive proof of the prisoner's guilt. I observe that the prisoner accounts for the cattle being in his shed by stating, that he found them trespassing in his chili garden, and tied them up in consequence. The witnesses for the prosecution admit, that he gave this account from the first and refused to restore the animals, without receiving half their value as compensation for the damage they had done. The witnesses for the defence also distinctly speak to the fact of having seen some cattle in the prisoner's garden, on the morning in question, feeding on his chili trees, thus corroborating his statement on a very material point. The discrepancies in the evidence merely amount to some difference regarding the number of cows, and rather tend to the credibility of the evidence than otherwise. There, moreover, appears to have been no concealment on the part of the prisoner, as it seems from the tenor of the witnesses' statement, that a report of some cows having been tied up by the prisoner was current in the village, and led

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the prosecutor and those with him to visit the prisoner's house in search of the missing cattle. Such publicity is not at all consistent with an idea that he stole the cattle. I see no reason therefore for considering the prisoner guilty of these thefts, and coincide in opinion with the sessions judge regarding his innocence. I therefore acquit him and direct his immediate release. It is, however, just a case in which a magistrate might think there was sufficient proof to warrant a commitment, I do not therefore think this commitment obviously erroneous, or unnecessary as stated by the sessions judge.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND SRENIBOSS HALDAR

versus

MANICK KYBURT (No. 5), AND GOUR KYBURT (No. 6).

BEERBHOOM.

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Case of
MANICK KYBURT and another.
Conviction and sentence passed by the sessions judge on two prisoners charged with dacoity confirmed in appeal.

CRIME CHARGED.—1st count, dacoity in the house of Sreniboss Haldar, from whence property valued at rupees nine and half an anna was plundered, and 2nd count, accomplices in the above-mentioned dacoity.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. W. Ainslie, officiating magistrate of Beerbhoom.

Tried before Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 22nd February 1853.

Remarks by the sessions judge.—The prosecutor's house was attacked by a gang of seven or eight dacoits on the night of the 6th Magh, or 18th January last, and plundered of property valued at rupees nine and half an anna.

As the robbers decamped followed by a number of the villagers, the noise and uproar that generally attends these occurrences spread the alarm amongst the surrounding villages, of one of which, namely, mouzah Soojapore, the two chowkedars, witnesses No. 1 and 2, gallantly hurried out to the scene of action and contrived to capture the two prisoners from amongst the gang whom they saw retreating, when the neighbours of the prosecutor who were present came up and rendered assistance in escorting them back to the village. This is satisfactorily established by the witnesses for the prosecution.

The prisoners have denied the charge from the beginning, and plead "not guilty" in this court. Prisoner, No. 5, states, that his cattle had been pounded by the manager of the Soojapore factory, and that he went there one evening to release them; that Essur Ghose, No. 10, for the prosecution, and No. 13, for the defence, sent him home promising to let them go on

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payment of a fine; that as he was returning very early the next morning, he was accosted by the witnesses, Nos. 1 and 2, and taken into custody by them as having been concerned in the dacoity, that had just taken place at Cumlabarree, the prosecutor's village.

Prisoner, No. 6, states, that he had gone to Soojapore in company with prisoner, No. 5, and advances the same statement in his defence.

The witness, Essur Ghose, when called by the prisoners, denied having seen them in his house, and professed ignorance of their story about the impounded cattle. Two witnesses depose to having observed them in Essur Ghose's house, but I do not think their evidence sufficiently credible to induce me to doubt the conclusive evidence for the prosecution. The prisoners themselves, do not profess to impute a motive to the two chowkeedars for the share they took in apprehending them.

I consider that the guilt of the prisoners on the first count of the charge is fully established, and therefore sentence them both to eight (8) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.---(Present Mr. H. T. Raikes.)—The two prisoners who have appealed were captured by the chowkedars of a neighbouring village, who were attracted to the spot by the cries of those in pursuit of the gang. They assert that the chowkeedars took them up on the following morning without any assignable cause, while the appellants were on their return home after searching for their cows, which had been impounded by the gomashtah of an indigo factory. There appears to me to be no doubt the prisoners were members of the gang, as the evidence to their capture by the chowkeedars is clear and satisfactory on that point. I therefore see no reason to interfere with the sentence passed by the sessions judge, and dismiss this appeal.

PRESENT:

SIR R. BARLOW, BART., and J. DUNBAR, ESQ., *Judges.*

GOVERNMENT

versus.

GOOKOOLNATH MITTER.

NUDDEA.

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Case of GOOKOOLNATH MITTER.

The prisoner was convicted of culpable homicide, in having killed his wife in a fit of uncontroulable passion, caused by his wife's supposed infidelity on seeing her let a man out of her house secretly.

CRIME CHARGED.—Wilful murder of his wife, Lukheemunee Kaitnee.

Committing Officer—Mr. G. Hewett, deputy magistrate of Cutwa, with full powers of a magistrate.

Tried before Mr. J. C. Brown, sessions judge of Nuddea, on the 19th January 1853.

Remarks by the sessions judge.—The *futwa* of the law officer of this court convicts the prisoner on his own confessions of the crime charged, and declares him liable to punishment by "*kissas.*"

I do not concur in the above *futwa,* because it is founded solely on the prisoner's confessions before the police and before the deputy magistrate, and with reference to the weapon, but, under the circumstances those confessions disclose, and in the absence of any proof or surmise of enmity or malice prepense, I am of opinion that only homicide has been proved and that under great provocation and excited feelings.

The prisoner is a man of education, and is respectably connected. He was lately peishkar in one of the civil courts of a neighbouring zillah, and from his manner and behaviour is evidently a man who must have been greatly excited and provoked, before he would commit so heinous a crime as killing his wife.

The only evidence against him are the confessions he made before the mohurrer of the thannah and the deputy magistrate at Cutwah; the first of which I should have considered open to doubt, on account of the very irregular manner in which it was taken down in writing by the thannah mohurrer, had it not been corroborated by the prisoner himself when he appeared before higher authority.

The prisoner's confession before the deputy magistrate was, that his wife having shown signs of being pregnant, when he on account of absence could not have had access to her, had raised suspicions in his mind of her having gone astray, and he also observed her conversing familiarly at times with three men, whom he named and who were neighbours; that in the early part of the night on which he committed the crime, he took his usual meal and went out to listen to some singing and on his return home he found the door of his house closed, but

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not fastened. He pushed it open, in doing which there was some noise made, and then on looking in he saw his wife and one of the men whom he suspected she had criminal intercourse with, named Juggobundhoo Banerjea, pass across the room, and observed the latter go out at a back door. He stated that he asked his wife why Juggobundhoo Banerjea was there at that hour, and she denied that it was him, when he told her that he had seen the man himself and recognised him, and that she was playing him false.

He seated himself on a *tukhtposh* (or wooden platform) on which their bed was made, and began smoking, and felt very much distressed (or annoyed) and was thinking over what had occurred, when she came to the same place, wrapt herself up in the clothes she had on, laid herself down and composed herself to sleep. His description of his feelings at that moment are very naturally described. He felt incensed (the expression made use of by the writer of the confession is রাগ which signifies passion, anger, distress and the passions in general) at her conduct, (for she had not only been caught by him in an act of incontinency, and unfaithfulness, but treated the matter lightly, and leaving him setting up to brood over his dishonor, she coolly went to sleep) and as soon as she was asleep, he in a sort of paroxysm, feeling unable to put up with her conduct, seized a stick which was there, gave her a blow on the head (which killed her) and bolted out of the house.

The stick was certainly a dangerous weapon, it measured 4 feet 4½ inches long, 4½ inches in circumference at the thickest end, 3½ inches in the centre and 3 inches at the thinnest end, and weighed 1 seer and 1 chittack. This the prisoner said he used with all his strength and with both hands. There was but one blow on the corpse on the left side of the head. He seems to have given her but one blow, which unfortunately proved fatal, and then to have quitted her.

About a week after he had made his voluntary confession to the deputy magistrate; he presented a petition to him revoking what he had said, and stating that he was in a state of intoxication or delirium from some potion given him by the burkundauze in charge of him, (which he named witnesses to prove) and that he did not know how the deceased was killed. The names of 18 persons were entered on the calendar, 7 of whom were examined, who declared their utter ignorance of any thing that would operate in the prisoner's favor, and he then declined having any further evidence taken on his behalf.

I have diligently searched through all the Nizamut reports, for precedents for my guidance in this case. I have found several cases of murders of wives by their husbands, where the

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crimes as reported even appear to have been of a deeper dye than what has been established against the prisoner, but there is one very similar case at page 154, of volume III, disposed of on the 13th of June 1828. Government against Shah Mahomed, in which in the conviction of murder, there being no evidence to the guilt of the prisoner except his own confession, the Court were of opinion that he should be allowed the benefit of it, as it stated circumstances of provocation. In that case there was only suspicion, in this under reference, the prisoner states that he had previously remonstrated with his wife regarding the familiarity he had observed between her and the three persons he has named, and in the night that he committed the murder one of the three took advantage of his temporary absence, to visit his wife, that he returned unexpectedly and found them together, when the paramour escaped. He then reproached his wife with her infidelity, when she made light of it, and told him what was false, when he knew it to be true, as he had seen the defiler of his bed with her. He appears from his own statement to have endeavoured to restrain himself from the commission of any crime, by setting down quietly to smoke, but after a while seeing his wife coolly and comfortably go to bed, leaving him to brood over her misconduct, and his own shame, his feelings as he expressed himself overcame him, he could bear it no longer, so he seized the stick which he knew was close by and without delay gave the guilty woman one blow which deprived her of life, (though he does not appear to have known it at the time) and left her. I think that the state of mind of the prisoner, where no doubt was left of the infidelity of his wife, should be taken into consideration as well as the little delay which there was between his being subjected to the greatest provocation a man can be exposed to, and the infliction of the fatal blow. After weighing every circumstance connected with this unhappy affair, and considering the prisoner's act of not so heinous a character as to demand very severe retribution, and being of opinion that justice will be satisfied in this case by a lenient sentence being passed, which will not only prove a sufficient punishment for the offence, but will at the same time act as a warning to the community at large, I beg, with due deference to suggest, that a sentence of one (1) year's imprisonment with labor in irons, be passed upon the prisoner.

Resolution by the Nizamut Adawlut. No. 164, *dated 4th February* 1853.—*(Present: Mr. J. Dunbar.)*—The court having perused the papers connected with the trial of Gookoolnath Mitter, observe, that the prisoner asserted in both of his confessions, that he was driven to the commission of the crime with which he is charged, by the violence of his

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feelings consequent on the discovery of his wife's infideltiy. The sessions judge has made no inquiry upon this point, and allowed all the witnesses to go away unexamined with exception of those to the apprehension, the sooruthal and the confessions. It is clear that the complexion of the prisoner's guilt is to a great degree dependent on the truth or otherwise of his wife's alleged infidelity. This must not be taken as a fact merely because the prisoner asserts it in justification of his own acts. It is of the utmost importance to ascertain from the relations and neighbours, whether the deceased was of such a light character as to render it not improbable, that she had admitted another man into the house during the absence of her husband. As the papers must, therefore, be re-heard, the court direct that the proceedings be returned with instructions to the sessions judge to procure the attendance of such witnesses, as may be able to speak to this point, and take their evidence, questioning them particularly as to any improper intimacy between the deceased and the three persons mentioned in the confessions, and to the alleged signs of pregnancy alluded to by the prisoner. As the family into which the prisoner moved would appear to be one of respectability, care should be taken that in searching for further evidence no unnecessary molestation be given to the females. He will then take a fresh defence from the prisoner and another *futwa* from the law officer, and submit the case again with any further remarks he may wish to offer, either in support, or in modification of the opinion he has already recorded.

Reply of the sessions judge of Nuddea, No. 75, dated 26th April 1853.—I have the honor to submit the supplementary proceedings in the case, held in obedience to the court's orders conveyed in their resolution, No. 164, dated the 4th February 1853.

There has been some unavoidable delay on the part of the deputy magistrate at Cutwah in carrying out those orders, owing to the disinclination which has been evinced by the respectable residents in the village, where the fatal act, which is the subject of this investigation, was committed to impeach the character of the deceased woman, as their doing so would reflect on the respectability of her surviving relatives. There hardly requires stronger proof of their being convinced that she had been carrying on an illicit intercourse with others, during her husband's absence than that the public prosecutor should have had to prosecute in the room of one of her own relations. Her brother named Mothooranath Mullick, declined to prosecute when asked to do so, and no one would have any thing to do with the corpse of her who had dishonored her family.

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The witnesses forwarded by the deputy magistrate arrived only yesterday, and I immediately commenced to record their depositions.

The prisoner was according to the instructions of the court called upon for a fresh defence. He was unprepared for making any, and said he had already made one, but checking himself for a moment or two, he said that he would before God, state every thing that had occurred, faithfully, and throw himself on the mercy of the court. He then recapitulated almost *verbatim* the confessions he had previously made with a truthfulness of the manner that could not be mistaken.

He has stated, that it is impossible for him to prove any thing; that he was not a resident of the place, but had gone there to take his wife home, she having been living at her father's. No one would give evidence for him, a stranger especially, when their speaking the truth would be derogatory of the family to whom the woman was related.

Most of the witnesses whom I examined yesterday said, that though no one would breathe a word about her incontinency before, since her death, her amours have been openly talked of and are no longer secret.

They have even stated that the village-talk now is, that the prisoner killed his wife on account of her illicit intercourse with others,

There is no proof that she was pregnant, and the native sub-assistant surgeon who held a *post mortem* examination reported she was not so.

The *futwa* of the law officer of this court is clear and satisfactory, and had it been given in the first instance might have rendered a reference to superior authority unnecessary. I concur in it entirely, being of opinion that the single fatal blow was given under great irritation as described very naturally in the prisoner's defence recorded yesterday, and I think the imprisonment for six (6) months which the prisoner has already undergone quite sufficient.

Remarks by the Nizamut Adawlut.—(Present Sir R. Barlow, Bart., and Mr. J. Dunbar.)—

MR. J. DUNBAR.—The sessions judge has formed an estimate of the guilt of the prisoner, in which I can by no means concur, and which is in my opinion, wholly unwarranted on the evidence and the facts. When the case first came before me, I thought the sessions judge had committed a grave error in having discharged the witnesses without having examined them fully in respect to the allegation of loose conduct and infidelity of his wife, put forward by the prisoner, as the exciting cause of his crime. On this account I directed further evidence to be taken. My object was to get hold of the truth, whether for

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or against the prisoner; but it is evident, that the sessions judge, in furtherance of the lenient view he had taken of the prisoner's guilt, was anxious only to procure exculpatory evidence. In his letter to the deputy magistrate of Cutwa, dated the 10th February last, he instructs that officer to use his best endeavours to obtain evidence in support of the confessions made by the prisoner, and expresses a strong hope, if such evidence be produced, that the prisoner would be released after being imprisoned for a limited period.

The tenor of these instructions appears to me, very objectionable; yet it must be admitted, that they have not had the effect of bringing out any evidence to which suspicion could attach; for not even one of the witnesses examined, has said a word condemnatory of the conduct of the deceased, on his own knowledge. They one and all speak to the opinion, as to the woman's chastity, formed by the community, in consequence of what had happened, inferring that she must have been bad because the prisoner killed her.

The act of the prisoner appears to me to be one, of a much higher degree of criminality than that at which it has been rated by the sessions judge. The prisoner asserts that he was driven to it by the poignancy of his feelings on discovering his wife's misconduct; but I find no evidence of such misconduct; and when I look to the manner in which the murder was perpetrated, the facts are strong against him. In both of his confessions, he admits, that he killed his wife after she had laid herself down to sleep, and so far from having despatched her with one blow, as stated in the judge's first report, he distinctly states in both confessions that he raised the club with both hands, and repeated the blows till he thought she was dead.

The question for consideration now is, whether the plea urged by the prisoner should be received in extenuation of his guilt. It has not been made good by the further investigation held under the orders of this court; yet as no previous malice or ill-will is alleged, and as the prisoner made no attempt to escape but at once voluntarily placed himself in the hands of his neighbours, he may be considered entitled to all the benefit to be derived from the statement he then made and which is essentially the same as he has since continued to make, at the different stages of the proceedings. Without the extenuating circumstances alleged, the prisoner's crime is deserving of death; but if they be admitted, a mitigated punishment would suffice.

I wish the papers to be laid before another judge. When he has gone through the record we can consult together as to the proper sentence to be passed.

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Sir R. Barlow.—The prisoner confessed fully in the mofussil and before the deputy magistrate, that he had detected on his return home one Juggobundhoo Banerjea in his house, the door of which was fastened inside. He suspected the fidelity of his wife, the deceased; and upon Juggobundhoo having been let out by a small door, he remonstrated with her upon her admitting him. She denied that he had been there, when the prisoner told her he had seen him through a chink in the door as he was making off. Deceased went into her room and covered herself with her clothes; the prisoner was seated close by, and in a moment of extreme rage, as he describes it, gave her a blow on the head with a club which killed her on the spot.

The case was sent up by the sessions judge. He differed with his law officer, who gave a *futwa* of *kissas* against the prisoner convicting him of wilful murder, while the sessions judge declaring the offence of which he considered the prisoner to have been proved guilty, to be homicide, recommended a sentence of one (1) year's imprisonment with labor and irons.

The case was laid before Mr. Dunbar, who on the 4th February, remanded it for further investigation upon the points adverted to in his minute of that date.

The trial is again before the court. The sessions judge convicts of the minor offence, it must be presumed, for he reduces the punishment he originally proposed, from twelve months to six, which the prisoner has undergone already. The law officer believing the defence raised by the prisoner, and the plea that he committed the deed, when in a state of excitement on account of his wife's infidelity in the matter of Juggobundhoo Banerjea, declares him entitled to his release.

The evidence taken on the remand has in no way served to develope the circumstances of the case. No proof of the prisoner's plea, that his wife was unfaithful to him, has been adduced; but in his defence, as shown in paragraph 4, of the sessions judge's letter, he accounts in some degree at least for the defect. In his defence he further stated, that the respectable witnesses whom he had named did not appear. He pleaded he was a stranger, the villagers were in league, and he was therefore unable to substantiate his pleas.

The sessions judge, who had the benefit of personal communication with the prisoner and the witnesses, comes to the conclusion that the case " is one of homicide only, under great provocation and excited feelings." In his second letter, after remand, he is of opinion, that the single " fatal blow was given under great irritation as described very naturally in the prisoner's defence."

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I concur in thinking that this letter of 10th February last, to the address of the deputy magistrate, is a most injudicious communication.

The object of the court's remand was to obtain further evidence, and to ascertain thereby whether the deceased was a loose character. Any expression, or even intimation, of the judge's "*hopes*" was out of place and improper on such an occasion.

The sessions judge remarks, 2, two of his letter 26th ultimo, "upon the disinclination evinced by the respectable residents of the village to impeach the character of the deceased woman, as their doing so would reflect on the respectability of her surviving relatives," and states his belief that an illicit intercourse existed between the deceased and others, on the ground that her brother declined to prosecute, and no one would have any thing to do with the corpse of her who had dishonored her family.

The judgment in this case must be founded chiefly on the motives which the prisoner assigns for the deed, and on the credibility of his own story; no one saw the murder committed. The prisoner *instantly* he had done the deed, went out and told several of the witnesses examined at the trial what he had done, and why he had done it. He concealed nothing and at once gave himself up. All this, in my view, gives his story the complexion of truthfulness, and thus affords ground for a mitigated sentence, which I think would meet the demands of justice. I do not think the deed was a *deliberate* one: there was hardly time for deliberation. The short interval, as told by the prisoner, which elapsed between his discovery of Juggobundhoo in the house with his wife, and the perpetration of the act, was employed by the prisoner in reflecting on his disgraced condition, which drove him to distraction and led to the murder. The sessions judge has the same impression which he records in very strong terms while he accounts, by no means unreasonably, for the prisoner's failure in establishing his defence. Upon full consideration of the circumstances, I am of opinion, that this is not a case which calls for the severest penalties; though it must not be dealt with so lightly as proposed by the sessions judge. I am prepared to meet Mr. Dunbar, and, after consultation, to pass such sentence as may be deemed sufficient and proper.

SIR R. BARLOW AND MR. J. DUNBAR.—Having carefully considered this case, we are of opinion that the prisoner's offence does not amount to the crime of wilful murder. Nothing on the record shows that the act was one of malice pre-

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The prisoner had gone to his father-in-law's house to take his wife home, and was staying there. After night fall, about 9 P. M. of the 18th October last, he was outside of the house listening to some persons singing close by, and presently returned home when he found the door barred from the inside. This roused his suspicions: he looked through a chink, and saw the deceased, his wife, run out of her room with a man Juggobundhoo Banerjea, whom she let out of the yard by a small wicket. She then opened the door at which the prisoner had previously endeavoured to enter, and he charged her with having admitted Juggobundhoo. She denied it; and the prisoner repeated that he had seen the man through the chink of the door; he then went into his room and sat down, and the deceased came, put herself on a *tukhtposh*, or bed, near him, and covered herself with her clothes. The prisoner was at the time highly incensed, and could not, as he describes, master his feelings, and in the desperation of the moment seized a bamboo which was near him and gave the deceased some blows with it, which caused her death; he immediately went out, and told a number of persons standing there what he had done, and why he had done it. The sessions judge is fully impressed with the truth of what the prisoner has stated in his confessions; and his conduct and admissions from the first moment to the last, convey the same impression to our minds. The prisoner is unable to establish his pleas; but it is a remarkable circumstance, as observed by the sessions judge, that none of the deceased's relatives are willing to come forward and prosecute on the occasion; her brother when called upon refused to act.

Believing as we do the prisoner's story, which, in the absence of any thing to the contrary, must be taken to be true, we come to the conclusion that the prisoner, in a moment of desperation, when unable to control himself in consequence of his excitement at the misconduct and supposed infidelity of his wife whom he discovered with a stranger in his house, did inflict blows on her with a club which was close at hand, and thereby caused her death.

We have above stated that this is not a case of wilful murder. The provocation was great, and it was recent. The interval between the discovery of the deceased with Juggobundhoo Banerjea, as related by the prisoner, and the moment of his inflicting the blows which caused death, was short. The prisoner struggled in vain with his feelings, and reason evidently had not interposed.

These are the grounds on which we hold that the prisoner is guilty of culpable homicide only. It is however necessary, for the sake of example, not to pass too lenient a sentence.

We think, with reference to the prisoner's condition in life, and all the circumstances, that he should be sentenced to five years' imprisonment without labor or irons, and we pass that sentence accordingly.

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We observe that the sessions judge's letter to the address of the deputy magistrate was injudicious and irregular. No expression of the judge's hopes should have been intimated to the subordinate authority, by which a *bias* in favor of the prisoner might have been created.

PRESENT:

SIR R. BARLOW, BART., } Judges
J. DUNBAR, ESQ., }

MUSSAMUT JHUNJHIYA AND GOVERNMENT

versus

BEHAREE (No. 12), BHEFAIE (No. 13), ILACHEE (No. 14), DUSRUT (No. 15), RAMCHURN (No. 16), AND BEHAREE (No. 17.)

PATNA.
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Case of Beharee and others.

Two of the prisoners, brothers, were convicted of murder on evidence direct and circumstantial, and sentenced to suffer death. A third prisoner was acquitted for want of sufficient proof.

CRIME CHARGED.—1st count, Prisoners Nos. 12 to 17, wilful murder of Dhujjo Dosadh, and 2nd count, culpable homicide of Dhujjo Dosadh. Prisoners, Nos. 15, 16, and 17, accessaries before the fact and at the time of the murder of Dhujjo Dosadh.

Committing Officer—Captain R. Spencer, officiating cantonment joint magistrate of Dinapore.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 2nd May 1853.

Remarks by the sessions judge.—The reason of the trial being referred is that, in concurrence with the futwa, I deem the charge of wilful murder established against Beharee and Bhefaie, sons of Bhuhore. I do not, however, concur with the acting law officer in the conviction of the prisoner Ilachee, against whom I consider the proof insufficient to establish any part of the charges. I have released the other three prisoners, concurring with the *futwa* as to the insufficiency of the proof against them.

It appears from the evidence in this case that the naik and two sepahees of the guard on duty in the orderly bazar, about 100 yards from the dwelling of the deceased Dhujjo, were attracted about half past three in the morning of the 17th of March, by a disturbance in that direction, and met Dhora, the deceased's brother, as they were proceeding thither. He told them that his brother had been murdered by the prisoners Beharee and Bhefaie, sons of Bhuhore, and the naik, Khodabux Khan, after viewing the body immediately repaired to their

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dwelling with the two sepahees, and apprehended those two prisoners. He also searched and examined their persons and clothes, and found fresh stains of blood on the *dhotee* of Beharee and on the feet of both. He also caused the chowkeedar, named Daboo, to search for weapons, and he brought out of the house a knife and hatchet *(koolharee)* both stained with blood, which were replaced when they had been found, after being inspected by the naik and the sepahees, Ramghoolam and Soonder Singh. These two witnesses corroborated the statements of the naik. Somewhat later in the morning Imam Khan, the kutwal of the sudder bazar, having received information of the occurrence, repaired to the spot and caused three others of the prisoners, named Dusrut, Ramchurn and Beharee, son of Shunkur, to be apprehended. This he did as he says in his deposition in this court of the 21st April, on the ground of the verbal information he had received from the deceased, Dhujjo's widow, the prosecutrix, but he admits that he had not administered the usual solemn declaration according to Act V. of 1840. He says he was about to record her deposition after having secured the prisoners, when he was stopped by Captain Spencer, the cantonment officiating joint magistrate, on account of the appointment of a court of inquest In this particular he is corroborated by Captain Spencer. This witness in the presence of Captain Spencer, now proceeded to examine and measure some foot prints left by the bloody feet of the murderers in their path from the body. Both these witnesses afterwards measured the feet of the prisoner, Beharee, No. 12, and found them to correspond with the foot prints near the body. These witnesses then examined the person of that prisoner and his brother, Bhefaie, and the evidence of Captain Spencer is very strong and precise as to the blood on the feet of the prisoners, which he says was fresh in great quantity and had the exact appearance of their having walked in blood. This witness mentions in reference to the explanation given by the prisoners at the time to account for their blood-stained appearance, *viz.*, that they had killed pigs the evening before, that he observed pieces of meat in the house of these prisoners, but it appeared by no means so recently killed as prisoners said. He describes also the color of the blood on the knife which he again caused to be taken from the prisoners' dwelling to be bright crimson, and quite fresh. Mr. assistant surgeon Owen proved the numerous deep wounds he observed on the body, mostly inflicted by stabs with a knife or knives to have been the cause of deceased's death.

To bring the murder home to the above-named prisoners, besides the evidence above alluded to, there is that of the widow and Dhora, the brother of the murdered man, and of

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Mungur, a neighbour, who all declare that they saw and identified them in the act of murdering him, and Durgao, another brother of deceased Daboo, chowkeedar, and the aforesaid Mungur all depose that they saw them run from the spot where the murder was committed into their dwelling.

These prisoners stated in their defence, that they were innocent of the crime laid to their charge, and that the stains of blood observed in their persons proceeded from some pigs they had killed in the evening preceding the murder; but of the fact of their having killed pigs so recently they adduced no evidence.

I therefore concur in the finding of the law officer, that they are guilty of wilful murder and, seeing no reason whatever for a mitigation of punishment in their behalf, I deem it my duty to recommend that they be sentenced to death.

Several of the witnesses declared in their depositions that they had recognized the prisoner Ilachee stabbing the deceased, and prisoners, Dusrut, Ram Churn and Beharee, son of Shunkur, standing by armed with sticks and aiding and abetting in the murder, and afterwards making their escape. But the moon was young and had set some hours, and it must have been exceedingly difficult for the witnesses by the faint light of the stars to be certain of the identity of the perpetrators, whether actually engaged in the crime or running away, particularly as they were not followed to the place where they were apprehended, as Beharee and Bhefaie were. There is no other proof to corroborate the evidence of the eye-witnesses, and these when examined (not indeed on oath) by the court of inquest, accused only Beharee and Bhefaie by name speaking of their accomplices as unknown.

I would, therefore, acquit Ilachee for want of sufficient proof of his guilt as well as the other three prisoners whom, concurring with the law officer, I have acquitted and released.

It appears to me that Captain Spencer in suspending his own and the kutwal's proceedings, until those of the court of inquest should be closed, and until he was directed by the order of the brigadier general to enquire into the case, acted on an erroneous view of the powers of such a court which does not appear to be empowered to take evidence on oath, or to issue a warrant for the apprehension of any person appearing to them to be guilty of murder. The adoption of such a course was attended with this objection, that feeling called upon to detain in custody or sanction the apprehension of the suspected persons, Captain Spencer was precluded from obtaining any better ground for his proceedings than suspicion, or at most the report of the kutwal, itself not resting as it ought to have done, on the legal ground of a depo-

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sition on oath. Such a proceeding, though sanctioned by Section IV., Regulation IX. of 1807, ought not, it will perhaps be admitted, to be resorted to without necessity when better grounds are obtainable. I therefore think it would be as well if the Court agree with me in this view, that they should issue some instructions for the future guidance of the officiating joint magistrate of the Dinapore cantonments in similar circumstances

The kutwal's conduct in apprehending several suspected persons without any legal ground, such as is described in Clause 1, Section XXV., Regulation XX. of 1817, seems to me open to severe censure, particularly as it may be suspected that he is in the habit of first apprehending a suspected person, and afterwards recording a deposition on oath to warrant his proceedings, as he was about to do in this case when he was stopped by the order of the joint magistrate. An extract from this letter will therefore be forwarded to the Superintendent of Police for his information.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. J. Dunbar.)—The evidence in this case is given in great detail by the sessions judge; it is unnecessary therefore to repeat it in this place.

By the depositions of the naik and sepoys who were on guard, close by, in the Sudder bazar, it is proved, that on the instant repairing to the spot, Dhora, the deceased's brother, at once named the prisoner Beharee, son of Bhuhore, No. 12, and Bhefaie, No. 13, brothers, and four others unknown, as the parties who had murdered the deceased. The prosecutrix swore, that the above prisoners, and three released by the sessions judge, made her husband, Dhujjo, deceased, very drunk on the day of the murder; that deceased and prisoners, Nos. 12 and 13, used to quarrel about the sale of their hog's lard and pork; and that these disputes led to the murder. She herself swears, positively, that she saw the deed done, as does also Mungur, who lives close by, and the evidence of several other witnesses goes strongly to confirm this direct testimony. The prisoners, Nos. 12 and 13 plead " not guilty" but offer no evidence in their defence. They do not deny that blood was found on their persons, and the clothes of No. 12, but urge thar they had killed two pigs on Tuesday evening, between 3 and 5 P. M., and thus account for the stains. It is highly improbable, that the prisoners, if they did kill pigs on Tuesday afternoon, would have allowed the blood to remain on their persons, till apprehended the next morning.. It was then, that Captain Spencer, the joint magistrate of the cantonments, a most important witness in this case, with the kutwal, the naik and sepoys, and other witnesses, saw *fresh* blood upon the prisoners. Captain Spencer in his deposition describes the blood

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to have been of a *crimson color*, and hence infers it was fresh blood. In the middle of March there can be no doubt that the color of the blood would have changed in the course of the twelve hours between 5 P. M. of Tuesday and 5 A. M. of Wednesday. The fact too that bloody foot marks were observed near the corpse; that the feet of prisoners, Nos. 12 and 13, were bloody, and that the length of the prints correspond with the length of prisoner No 12's feet; that the clothes of prisoner, No. 12, had fresh stains of blood on them; the finding of the knife and *koolharee* with fresh stains of blood; the absence of any thing like a reasonable defence by the prisoners; and the direct and immediate statements by the witnesses already adverted to; all these circumstances being duly weighed, we see no reason for differing from the sessions judge and law officers of the zillah and Sudder Court in the conviction of the prisoners, Nos. 12 and 13, of the wilful murder of Dhujjo. We therefore sentence them to death.

The prisoner No. 14, Ilachee, is acquitted by the sessions judge, who differs with his law officer. With respect to this prisoner, there is none of the confirmatory evidence which supports the evidence of the eye-witnesses against the other two prisoners. We concur with the sessions judge. The prisoner, No. 14, is acquitted for want of proof.

The court observe, with reference to the sessions judge's remarks at paragraphs 9 and 10 of his letter, that proceedings are not carried on usually in military cantonments, in preliminary enquiries, with that strictness which prevails in the criminal courts. It appears to have been the object of the authorities to prevent the escape of the persons suspected by the prosecutrix and her witnesses: they therefore took immediate measures for the apprehension of those parties. Nothing that was done on the spot would vitiate the proceedings.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

GOORDYAL.

SARUN.

1853.

May 28.

Case of GOORDYAL.

The prisoner, who was charged with perjury, was acquitted on the ground that there was not sufficient evidence to show, that both of the depositions made by the prisoner, as a witness, had been taken on oath.

CRIME CHARGED.—Perjury.

Committing Officer—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 11th May 1853.

Remarks by the sessions judge.—I refer this case because I dissent with the *futwa* of the law officer, which acquits the prisoner of the charge made solely on the ground of its not being established under the Mahomedan law, in consequence of there being but one witness.

The facts of the case are shortly as follows: The prisoner, who was a witness on the part of the prosecution in a case of homicide, on the 12th April last, deposed under a solemn declaration taken instead of an oath before the magistrate, that he had seen a boy named Chuttoo, (not then taken) beating the deceased with two other persons; and afterwards, on the 20th idem, (when the said Chuttoo had been apprehended and brought in) he stated that he (Chuttoo) had *not* beaten the deceased neither had he a "*lattee*" in his hand, but was only looking on at a distance; that he had seen the other two men beating deceased, but *not* Chuttoo,

The prisoner in his defence pleads, that on the first day he told the truth, *viz.*, that the boy was aiding and taking part in the assault, and that on the 2nd he got frightened and alarmed and does not know what he said; but there is no reason to think that this was the case, as the writer of the depositions states clearly that the man was perfectly well and composed on both occasions, and indeed there was nothing to frighten him, and I can attribute his second deposition only to a wish to screen the boy and to get him off. I cannot, therefore, under all the facts of the case, but hold that the prisoner has deliberately and intentionally told an untruth in the matter, and as the moulvy acquits, it becomes my duty to refer the case for the orders of the court, and I therefore submit the proceedings recommending, in the event of their agreeing with me, that he be sentenced for the offence to imprisonment with labor and irons for one (1) year.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The record shows that the deposition of the 12th April was taken on oath, but it does not show that the deposition of the

20th idem was also taken on oath. I do not think the testimony of the mohurrir, who wrote the depositions, sufficient to supply this important omission. He says in general terms that both depositions were made upon oath, but if so, the record itself should show it. A fact of such importance must not be left to be made out, from the recollection of a mohurrir who may probably have taken half a dozen other depositions on each of these dates. The commitment is essentially bad; and on this ground, I acquit the prisoner, and direct his immediate discharge.

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Case of
GOORDYAL.

PRESENT:

J. DUNBAR, Esq., *Judge*.

NITTANUND SHAHA AND GOVERNMENT

versus

HOSSEIN SHEIK (No. 5, APPELLANT), BHAGEEMUNT SHAHA (No. 6), SOOKCHAND SAHA (No. 7, APPELLANT,) AND HAGOO HAZAM CHOWKEEDAR (No. 8.)

JESSORE.

1853.

May 28.
Case of
HOSSEIN
SHEIKH and
others

Conviction and sentence passed by the sessions judge in a case of river dacoity upheld in appeal. Sentence of six months' imprisonment passed on a chowkeedar, guilty of privity in knowingly concealing, and not reporting the crime, held to be too lenient.

CRIME CHARGED.—1st count, prisoner No. 5, dacoity on the boat of Nittanund Shaha, the prosecutor, and plundered therefrom property valued at rupees 1,548, 12 annas 12½ gundas, during the night of the 9th September 1852; 2nd count, prisoners Nos. 6 and 7, buying some part of the plundered property and receiving it in their possession, knowing it to have been obtained by robbery by open violence, and 3rd count, prisoner, No. 8, concealing the crime knowing it to be such.

CRIME ESTABLISHED.—Prisoner, No. 5, river dacoity; prisoners, Nos. 6 and 7, buying part of the plundered property and receiving it in their possession, knowing it to have been obtained by robbery by open violence; prisoner, No. 8, concealing the crime of dacoity knowingly.

Committing Officer—Mr. H. Rose, assistant joint magistrate at Khoolnah, zillah Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 11th March 1853.

Remarks by the sessions judge.—From the evidence it is clear that Bungoo Chunder Sha, gomastah, witness, No. 25, hired a boat belonging to Nuzeemudeen Manjee, witness No. 1, and despatched cloth, iron and thread, to the value of rupees 3,400 and more, to his employer, Nittanund, who resides at Haldea, in zillah Dacca. On the night of 9th September, 26th Bhadoon, the boat was fastened near Daryala, about 9 koss above Khoolnah; dacoits cut the rope brought two boats alongside, rushed on board and began beating; they tied the

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May 28.

Case of HOSEIN SHEIKH and others.

manjee, but the four mullahs jumped overboard, three of whom, witnesses, Nos. 2, 3, and 4, swam ashore, and the other (Setabdee) has not been heard of since.

The dacoits carried off cloth worth about rupees 1,548, and left the boat to drift down the stream. The manjee managed to throw a rope to the mullahs on the shore. The chowkeedar (prisoner, No. 8,) came and asked them why they had shouted, and was informed that a dacoity had been committed. He threatened them and desired them not to make such an assertion again. They were afraid of losing the remainder of the property if they tarried in order to lodge information at the thannah, and therefore they pursued their way to Haldea. The manjee presented a petition, dated 3rd Assin to the deputy magistrate at Munsoorgunge, who sent it to the magistrate of Jessore, by whom it was forwarded to the joint magistrate at Koolnah. That officer, on 24th September, held a roobakarree requesting the deputy magistrate of Munsoorgunge to send the prosecutor to him, and directed the darogah of Noabad to make enquiries. The darogah proceeded to the spot, and on 28th September, Nitanund Shaha, with the manjee and three mullahs came to him. On 30th September, the chowkeedar, prisoner, No. 8, declared to the darogah that he had been forbidden by the farmer, towards the close of Bhadoon, to report the dacoity.

The villagers allowed that they had heard shouting in boats, but were not aware that a dacoity had occurred.

On 2nd October, the darogah reported that he had learned that some up-country people had landed from boats at Basoondree near Daryla, about the date of this occurence : accordingly the darogah took the deposition of the chowkeedar, witness No. 5, who said that some 25 people, in two boats, had stopped near his village, some of whom came on shore, and among them he recognized Roshun, Hurry Napit and others, and he suspected them. Roshun was not found, but from the women of his house it was discovered that his brother, Hossein, prisoner No. 5, had been away in a boat and returned. Hurry Napit, &c., were consequently apprehended, and on 9th October, Hossein confessed before the darogah. Again on 12th idem, he confessed before the officiating magistrate; that he with Hurran and others had committed the dacoity, and that some of the cloth was sold to Bhageemunt, prisoner No. 6, who admitted that he had purchased the cloth for 575 rupees from Hurran and others, and immediately sold some to Titoo and Komul ; lodged some cloth with Ombica, witness No. 26, and sold some to Sookchand, prisoner No. 7, Hurry Sha, Mohabarut and Hurry Sha, 2nd ; but has no proof of these sales. Hurry Sha, Mohabarut and Hurry Sha, 2nd, deny purchasing. Sookchand

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acknowledged that Bhageemunt one day came and told him he had got cloth from Calcutta which he would sell to him, and that it was at at Ombikachurn's house; he therefore twice bought some pieces of cloth (at much less than the Calcutta value named in the inventory) for which he paid Ombika and Bhageemunt. Some of the cloth he sold, and the remainder he concealed in a widow's house at Lohagara, for fear of being implicated in dacoity.

He accompanied the darogah to Soondry Bewa's house, and in presence of witnesses, Nos. 22 to 24, produced nineteen pieces of plundered cloth.

I convict Hossein of river dacoity, and sentence him to fourteen (14) years' imprisonment with labor in irons in banish ment.

I also convict Bhageemunt and Sookchand of buying part of the plundered property and receiving it, knowing it to have been obtained by robbery by open violence; and sentence them, each, to seven (7) years' imprisonment with labor in irons.

I also convict Hagoo Hazam, chowkeedar, of the crime charged against him, *viz.*, concealing the crime knowingly, *i. e.*, of privity, (*vide* Nizamut Adawlut Circular Order, No. 8, of 7th June 1847,) and sentence him to six (6) months' imprisonment and to pay a fine of twenty (20) rupees in lieu of labor by 20th instant, or in default of payment to labor until the fine be paid, or the term of sentence expire.

I tried the case under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—The conviction is good ; and I see no reason to interfere with the sentence of the sessions judge. I observe that the judge in charge of the English department has remarked that the sentence in the case of the chowkeedar was exceedingly lenient. His crime is one of a very grave nature, and I certainly think, called for a much heavier and more exemplary punishment.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT

versus

MUNGLEE KHAN AND EDOO.

BHAUGULPORE.

1853.

May 30.

Case of MUNGLEE KHAN and another.

Conviction and sentence, by the sessions court, upheld in appeal, although the thanna confessions of the prisoners were liable to suspicion.

CRIME CHARGED.—1st count, theft of property to the value of company's rupees 563-7-9, and 2nd count, receiving and possessing stolen property knowing at the time of receiving it that it had been obtained by theft.

CRIME ESTABLISHED.—Theft of property to the value of company's rupees 563-7-9.

Committing Officer—Mr. R. O. Heywood, magistrate of Bhagulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 16th February 1853.

Remarks by the sessions judge.—Prisoners plead *not guilty.*

This theft occurred in the Town of Bhaugulpore. Musst. Bunnoo had left her house to visit a brother about a coss off. One Musst. Anarkullee, who lived in the same yard with her, was left in charge of the premises. The theft took place on the very night she left her house, and the very next morning early she heard of it and returned home, gave notice to the thannah, and entered a list of the property stolen.

The prisoners were apprehended by accident at Durreecapore, some four coss from Bunnoo's house. It seems they went off at night with their share of the spoil, towards their own houses at Chireea in the Umurpore thannah circle. They reached Durreecapore very early in the morning, each with a bundle over his shoulder, and were stopped by the chowkeedar, Chigroo, witness No. 1, or a burkundauze of the thannah, Runjeet Sing, No. 2, (it does not appear clearly from which the arrest originated), the bundles were searched, the articles produced in Court, found, the Bhaugulpore darogah following up a clue he had obtained arrived on the spot, the property was found to be that stolen from Musst. Bunnoo's house, and prisoners were eventually transferred to the Bhaugulpore thannah, where they confessed to the robbery, implicating several others, who were released by the magistrate. Before the magistrate, prisoners deny this confession, stating that they found the articles in question lying in the road, and were carrying with intention of leaving them at the Umurpore thannah. The property found on prisoners, is valued at about 232-8-6. Before this court prisoners tell the same story as before the magistrate, acknowledging possession of the stolen

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Case of MUNGLEE KHAN and another.

property, but say they found it on the road and were taking it to the thannah, when they were apprehended at Durreeapoor.

The mofussil and foujdaree confessions have been duly attested before this court and are received on evidence, for corroborated as the mofussil confession is, by the circumstances of the case, there can be no reason for rejecting it. The jury bring in a verdict of guilty of the charge preferred in the calendar, in which I concur.

The case is clearly proved against the prisoners on their own admission. They are convicted of theft and sentenced as follows:—Munglee, prisoner, No. 1, to five (5) years with labor in irons, and Edoo, prisoner, No. 2, a hardened offender, having been already three times imprisoned for various crimes, to nine (9) years with labor in irons, and to pay a fine of 330 rupees 15 annas 3 pie, as shewn in the statement above.

There are some irregularities in this case, which have been brought to the magistrates's notice in a roobakarree of this date.

First,— The taleeka taken from Musst. Bunnoo is dated, at the commencement, the 12th December, and at the end, the 14th December, the theft took place on the night of the 12th December, the last date is probably the correct one, but the magistrate does not seem to have noticed the discrepancy.

Secondly,—The date prefixed to Musst. Bunnoo's deposition is Tuesday the 14th December, corresponding with the 18th of Aughun, which has evidently been altered from Wednesday, the 13th December, corresponding with the 17th of Aughun, which alteration is not accounted for by the darogah or noticed by the magistrate.

Thirdly.—The confession of prisoners was taken before the law officer without any explanation from the magistrate, of the reason why it was not taken before himself, as laid down in the Nizamut's Circular, No. 3, of the 27th of March 1851.

Sentence passed by the lower court—No. 1, Five (5) years and No. 2, nine (9) years' imprisonment with labor and irons, and, under Act XVI. of 1850, to pay jointly and severally a fine of rupees 330-15-3, as compensation for the losses sustained by Musst. Bunnoo.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—The prisoners have appealed, repeating only the statement that they had found the bundles of property lying in a garden near the road, as they were going to their homes from Bhaugulpore. But, had this been the case, they would not have carried off the bundles to a distance, but have delivered them to the police of the town, which was near to the place where they profess to have found them. This finding, the prisoners going off with bundles of such valuable property, early on the morning after the theft, is a conclusive fact against them. The mofussil confessions are open to much

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suspicion, as, on the 14th December, the prisoners made their statements to the police mohurrir in the presence of the kutwalee darogah, to the same effect as their present defence; but, after being taken to the thannah, and being kept a night there, they are stated to have made these full confessions on the 15th. I confirm the conviction and sentence on the prisoners without reference to the confessions.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

RAJOO DOSS (No. 1), MUSST. SOMEE (No. 2), NUSEERAM DOSS (No. 3, APPELLANT,) AND JOOGUL DOSS (No. 4.)

SYLHET. — 1853. — May 31. Case of NUSEERAM and others. Prisoner convicted by the sessions judge, as an accomplice in culpable homicide by administering drugs to procure abortion, and sentenced to two years' imprisonment. Appeal rejected

CRIME CHARGED.—1st count, wilful murder of Musst. Doorgah; 2nd count, culpable homicide of Musst. Doorgah, and 3rd count, privity to the crimes charged in the 1st and 2nd counts.

CRIME ESTABLISHED.—Culpable homicide.

Committing Officer,—Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 29th April 1853.

Remarks by the sessions judge.—A chowkeedar gave notice at the thannah of the death of Musst. Doorgah, under suspicious circumstances, and a *post mortem* examination proves that she had a miscarriage.

The prisoner, Rajoo Doss, confessed before the darogah and the magistrate, that he had gotten the deceased with child and administered drugs to her with the view of procuring abortion, and these confessions are proved to have been made voluntarily. He also pleaded guilty before this court to the administering drugs to the deceased with the view of causing abortion, and it is proved that the deceased was taken ill and died shortly afterwards, so that there can be no doubt whatever of his guilt.

Nuseeram denied all participation in the crime, but stated that Musst. Somee had made him acquainted with the circumstance.

The witness, Dookhee, however, distinctly swears, that Nuseeram Doss consulted with Rajoo Doss as to the best manner of causing abortion, and was present when the medicine was given, and Joytarah deposes to Nuseeram's bringing medicine to the house and asking for a "*kutorah*" to put it in,

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and others.

though she did not see the medicine administered. Under these circumstances, I consider it proved that he was an accomplice. One of the assessors acquits the prisoner while the other convicts him of privity.

Sentence passed by the lower court.—Prisoner, No. 1, imprisonment for four (4) years without irons and a fine of twenty-five (25) rupees, or, in default, to labor, and prisoner, No. 3, imprisonment for two (2) years and a fine of fifteen (15) rupees, in default to labor.

Prisoners, Musst. Somee (No. 2), and Joogul Doss, (No. 4), have been acquitted by the sessions judge.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoner, No. 3, has appealed, referring to the evidence of his witnesses. These, however, speak only generally of the prisoner's character and habits, and prove nothing as to the particular case.

I see no ground to distrust the evidence of the mother and sister of the deceased against the prisoner. It has been given consistently from the first police inquiries.

The appeal is therefore rejected.

SUMMARY CASES.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

BIPUN DOME, CHOWKEEDAR.

BEERBHOOM.

1853.

May 7.

Case of BIPUN DOME, CHOWKEEDAR.

Reg. II. of 1834 only declares in what cases a fine must, in the first instance, be imposed in lieu of labor; but it does not define the cases in which the criminal courts are competent to pass a sentence of labor.

This case was referred to the Nizamut Adawlut under Section V. Act XXXI. of 1841, and Circular Order, dated 18th March 1842, by Mr. R. B. Garrett, sessions judge of Beerbhoom, on the 29th April 1853, with the following report:

Mr. Ainslie has sentenced a chowkeedar for neglect to three months, imprisonment *with labor*, and has quoted as his authority for so doing, the Circular Order, No. 18, dated 29th October 1852.

I am of opinion, that Mr. Ainslie has misconstrued that Circular, and that it was never intended to rescind the provisions of Regulation II. of 1834. Considering, therefore, that the sentence is illegal, I beg leave to forward the papers for the consideration and orders of the Court.

As Mr. Ainslie has left the district, I am unable to call upon him for any explanation, as required by Circular Order, No. 9, dated 17th July 1851.

Resolution of the Presidency Court of Nizamut Adawlut, No. 506, *dated the 7th May* 1853.—(Present: Mr. J. R. Colvin.) —The Court having perused the papers above recorded, observe, that Regulation II. of 1834, in no way defines the classes of cases in which the criminal courts are competent to pass a sentence of labor. It only declares in what cases a fine must, in the first instance, be imposed in lieu of labor.

The order of the officiating magistrate is set aside, and the present magistrate will pass a fresh decision, stating what fine he may think it just and proper to award in lieu of labor, and providing only for the imposition of labor, in the event of non-payment of such fine. See the Court's order of this date on the sessions judge's reference, No. 77, of the 29th ultimo, in the case of Golam Chamar.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

PEAREE PESHAGUR

versus

SEETUL SIRDAR (No. 1), FUTTUK SIRDAR (No. 2), KETHABDEE SIRDAR (No. 3), AND MUHUNG SIRDAR (No. 4).

RAJSHAHYE.

1853.

May 27.

Case of SEETUL SIRDAR and others.

A sessions judge having in appeal quashed a conviction by a magistrate, on the ground that the facts of the case did not show that the offence of *theft* had been committed, it was not competent to the magistrate to disregard the opinion of the judge, and in reference to the same admitted facts, again to convict and punish the prisoners upon his own opinion that the offence was properly to be considered as theft. He should first have made a reference to the Sudder Court under Regulation X. of 1796.

CRIME CHARGED.—Theft.

Committing Officer—Mr. F. L. Beaufort, officiating joint magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 10th May 1853.

This case was referred by the sessions judge of Rajshahye, under Section V. Act XXXI. of 1841, with the following report:

The prisoners it will be seen were sentenced by the officiating joint magistrate of Pubna, on the 30th of August last, respectively, to one year and a half—one year—and to six months' imprisonment, with labor and irons, for a theft committed in the house of the prosecutrix.

On their appealing and the case being heard I considered there was no theft, the circumstances of the case clearly showing it was one of those forcible outrages so common at Pubna, and coming under the denomination of *loot turaje* or plundering.

The prosecutrix had been formerly living with the prisoner No. 1, as his concubine and had left his house, and the probability is (though the prisoners plead not guilty throughout) that he, together with his brothers, to resent her leaving him, went to her house and carried off a petarrah containing some articles that the prisoner, No. 1, had given her to wear.

She herself has so shifted the value of these things that it is impossible to say what was their real value, and except, that they were seen carrying off a petarrah, there is no proof of the articles stated, having been taken by the prisoners.

Doubting therefore that there was any theft (there being nothing *stealthy* in the proceeding) I, on the 20th September last, quashed the joint magistrate's conviction, and directed him to pass a proper order in the case.

On the 30th of September he, without recording any thing further for his opinion, and without any reference to this Court, upheld his first order; and on my visiting the jail the prisoners again appealed, but on this occasion after the time for appealing had elapsed; I therefore cannot disturb the sentence passed upon them.

Being *still* of opinion there was no theft (as the prosecutrix did not complain of theft, the police reported no theft had

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taken place and when called upon to plead, the prisoners were not *at first* asked if they had committed theft) I again think the conviction should be quashed, and as one of them has undergone his sentence and been released, should the Court concur with me, that there has been no theft or stealing from a dwelling-house, I would suggest that the other three prisoners should be released also. No. 1 may have been the mover in the business, but the offence of all was the same; and do not I see how any distinction could be made as to the measure of punishment.

To quash the conviction, and again to leave it to the joint magistrate to pass a fresh order, may only lead to his again upholding his former one. For having once shown so little deference to the opinion of the appellate court, it may be doubted if he will be guided by the opinion of still higher authority; and in a recent communication to me he stated, "I need only remark that I consider myself bound, as a judicial officer to try every case according to its merits, as apparent in itself, and to be guided in my decision by that which in *my own* judgment appears to be established. I should, as I think, fail in my duty if I were to allow my judgment to be guided by the mere opinion of another court, even though the appellate authority rests therein."

Resolution of the Nizamut Adawlut, No. 523, *dated the* 17*th May* 1853.—(Present: Mr. J. R. Colvin.)—The Court, having perused the papers above recorded, observe that they cannot decide on this reference without having before them the explanation of the officiating joint magistrate. The sessions judge should have awaited the receipt of that explanation, calling for its early transmission in the event of any unusual delay in its receipt.

The officiating joint magistrate might very probably wish to refer to the record in preparing his explanation. The sessions judge ought, therefore, not to have sent off the record to this court before hearing from Mr. Beaufort.

The record will be immediately returned, that the officiating joint magistrate may have the means of referring to it, should he desire to do so. The case is, for the present, struck off the file of this court.

In reply to the above the sessions judge submitted the following letter, No. 35, dated the 14th May 1853.

In continuation of my letter, No. 30 of the 10th instant, I beg to forward the officiating joint magistrate's explanation*

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* From the officiating joint magistrate of Pubnah, to the sessions judge of Rajshahye, No. 139, dated the 13th May 1853.

I have the honor to acknowledge the receipt this day of your letter,

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in the case of Seetul Sirdar and three others convicted of theft by him.

If he recorded a fresh opinion after the case was returned to him, I must have made a mistake, and when the papers were read over have confused the two, at the same time passing the same sentence was not showing much deference to the opinion of the appellate court.

A copy of the letter alluded to in the 6th paragraph of his letter is also enclosed; also a copy of a Persian letter written by me to the deputy magistrate of Pubnah, moonshee Wassuffuddeen, and also a copy of the Oordoo proceeding out of which both the above arose.

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* Pearee Peshagur, *versus* Seetul Sirdar and others.

No. 37, of the 10th instant, enclosing copy of your letter to the Sudder Court, No. 30, of the same date, regarding the case noted in the margin.

You have already transmitted the record of the case to the Sudder Court, and I have therefore no opportunity of referring to it. But the main facts of the case are within my memory, and I have with me a slight memo. of the case; and I am so far enabled to explain what appears to you unsatisfactory.

If the plaintiff's story is held to be true, I can see no circumstance distinguishing it from theft. The four accused persons, she says, went to her house in the middle of the night, and seized her, keeping her with them while they collected the property. They put her ornaments and the other things into a petarrah, which they carried away.

You observe that there was nothing "stealthy" in the proceeding; but secrecy, as I understand it, is not a necessary element of theft. Snatching from the person amounts, I believe, to be theft; and is punished accordingly. I considered this to be an aggravated case of simple theft. One of the prisoners had been in jail for three years for theft, and one was a youth, which will account for the distinction made in the measure of punishment. If I remember right the defence entirely failed.

When you quashed my first order, I went carefully through the proceedings, and decided according to the best of my judgment. And in doing so I saw no wrong, for an appeal was again open to the prisoners; and had you considered them guiltless of the offence you would, of course, have acquitted them when the appeal was before you. And if you thought them worthy of a less punishment you might, I believe, have reduced it. As you simply quashed my order, it appeared that you left it to me to exercise my discretion. You say that I recorded no further opinion, but I remember distinctly dictating my reason for upholding my former sentence.

As regards the last paragraph of your letter to the Sudder Court, I shall be obliged by your forwarding to the Court a copy of my letter from which you have quoted, and of the Oordoo proceeding to which it was a reply. The Court will hardly understand my reason for so expressing myself without referring to the other papers. You accused me in very grave language of insubordination to your authority, because I investigated the characters of certain persons who were acquitted at the sessions on a specific charge of dacoity, and who seemed to you on that trial to be respectable persons. I considered that I had good and valid reasons for coming to an opposite conclusion, and I excused myself from your accusation by respectfully stating that, under such circumstances I felt myself bound to act upon that conviction rather than on the opinion previously formed by you.

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There was no "gross language" that I can find, used, I merely adopted the words in the Court's Circular of the 26th September 1828, "that without proof of recent circumstances warranting the imputation of dishonest livelihood at the time of apprehension, to confine an individual in jail was a *manifest act of injustice.*"

The case in question will have to be referred for the opinion of the Court with others, in which prisoners, though released both at the sessions, and in appeal, have notwithstanding been detained by the joint magistrate on a charge of bad livelihood, for the Court to decide, whether there has not been on the part of the joint magistrate "an erroneous construction of Regulation VIII. of 1818." I therefore have to request that they will not give any opinion in the case alluded to (and which is irrelevant to the present reference) till they have all the papers before them.

Resolution of the Presidency Court of Nizamut Adawlut, No. 552, *dated the* 27*th May* 1853.—(Present: Mr. J. R. Colvin.)—The Court having perused the papers above recorded connected with the case of Seetul Sirdar and others, observe that, the sessions judge having quashed the first conviction of the officiating joint magistrate on the one ground, that the facts of the case did not show that the offence of *theft* had been committed, it was not competent to the officiating joint magistrate to disregard the legal opinion of his superior officer, and to punish the prisoners, in reference to the same admitted facts, upon his own opinion that the offence was properly to be considered as theft.

The officiating joint magistrate ought, if differing from the sessions judge on the point of law, to have acted according to the provisions of Regulation X. of 1796, and to have requested a reference to this Court in the manner there laid down.

His conviction and sentence on the prisoners, Seetul Sirdar, Futtuk Sirdar and Kethabdee Sirdar are therefore annulled. Should he think fit to hold further proceedings with a view to a fresh sentence on the prisoners, he will act in the manner above pointed out.

The sessions judge and the officiating joint magistrate are referred, on the point of difference between them, to Harington's Analysis, Vol. 1, page 273, as showing what is required for a conviction of theft under the Mahomedan law.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

RAMRUTTUN ROY.

GOVERNMENT

versus

HURNATH ROY AND OTHERS.

RAJSHAHYE.

1853.

May 31.

Cases of RAM RUTTUN ROY AND HURNATH ROY

If a magistrate wishes to punish a zemindar for neglecting to report the occurrence of a burglary, he should proceed in the course directed by the Circular Order, No. 52, dated 12th June 1840, *viz.*, first by requiring from him a written explanation, and if that explanation is unsatisfactory, by summoning him to appear in person or by mookhtear to answer the charge.

These cases were referred to the Nizamut Adawlut, under Section V., Act XXXI. of 1841, and Circular Order, dated 18th March 1842, by Mr. G. C. Cheap, sessions judge of Rajshahye, on the 10th May 1853, with the following reports :—

On trial of Ramrutton Roy.—There is nothing on the record to show for what offence the petitioner was fined. The order was passed on an *arzee* or representation made by the petitioner's mooktear, and the nazir ordered to levy the fine.

Presuming that the fine was for neglect, in not reporting a burglary, or rather the occurrence for an attempt to commit a burglary within his estate, still the petitioner should have been allowed a hearing or to show cause, before the fine was imposed, under the Nizamut Adawlut's Circular Order of the 12th June 1840, (No. 52, Vol. III.)

It will be seen that the attempt to commit a burglary was in the house of a *takaz-geer*, in the employ of an indigo planter, and close to the factory. That the owner of the house reported the attempt being made, and stated he had lost *nothing*. Nevertheless the petitioner, the owner of the land on which the house stands, is fined twenty-five rupees for not reporting so insignificant a case.

As the petitioner had no fair hearing and the circumstances of the case rendered it quite unnecessary, in my humble opinion, that a fine should be imposed; and being under fifty rupees it is not within my competence to disturb the order, I beg to refer the case for the orders of the Superior Court.

On trial of Hurnath Roy.—There is nothing on the record to show for what offence the petitioner and others were fined twenty rupees. The order was passed on a report made by the thannah mohurrir, and the darogah was directed to levy the fine.

Presuming that the fine was for neglect in not reporting a burglary or an attempt to commit one, occurring within his estate, still the petitioner should have been allowed a hearing, or an opportunity to show cause why he should not be fined, under the Nizamut Adawlut's Circular Order of the 12th June

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1840. And as no opportunity was given him to explain, I consider the sentence was an arbitrary one, and uncalled for, and ought to be reversed, as nothing whatever was stolen or taken from the house of the person residing on the petitioner's land.

With regard to the fine of ten rupees. It seems to have been imposed for neglect, after calling for an explanation, but *after* the thief was convicted of stealing from the house of the prosecutor, a chowkeedar, property valued at five rupees three annas.

Now in this case every thing that could be done for the ends of justice was done. The chowkeedar, the owner of the house, complained, and reported the theft. The thief was caught, and punished; and fining the zemindar *twice the* value of the property stolen, appears, to my comprehension, a very questionable way of procuring the co-operation of land-holders and their agents in the detection of offenders, if not directly opposed to the orders of Government, communicated with the Court's Circular Order of the 10th November 1820, (No. 241 of Vol. I.) and repeated in their Circular of the 21st December 1832, (No. 130 Vol. II.)

This order appears also to me an arbitrary one, and uncalled for; both were passed on the same day, but as the fines are under fifty (50) rupees, it is not within my competence to disturb the orders. I therefore beg to refer the cases for the orders of the Superior Court.

Resolution of the Presidency Court of Nizamut Adawlut, No. 583, *dated the* 31*st May* 1853.—(Present: Mr. J. R. Colvin.) —The Court, having perused the papers above recorded, reverse the orders of the officiating joint magistrate, imposing a fine of twenty-five (25) rupees on Ramruttun Roy and thirty (30) rupees, in two cases, on Hurnath Roy, and direct that the fines, if they have been levied from the parties, be returned to them, as that officer has not followed the course expressly prescribed for the guidance of magistrates in such cases by the Circular Order of 12th June 1840, referred to by the sessions judge.

The officiating joint magistrate must be careful to follow strictly the prescribed course in all like instances in future.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

BIRJOMOHUN HOLDAR.

24-PERGUNNAHS.

1853.

June 1.
Case of BIRJOMOHUN HOLDAR.

Prisoner convicted of affray in which a man was killed sentenced to three years' imprisonment. Conviction and sentence upheld in appeal, there being no good evidence in support of the prisoner's plea of *alibi.*

CRIME CHARGED.—1st count, being accomplice in the culpable homicide of Juggomohun Lushker, and 2nd count, affray in which Juggomohun Lushker was killed.

CRIME ESTABLISHED.—Affray in which Juggomohun Lushker was killed.

Committing Officer—Mr. E. A. Samuells, magistrate of 24-Pergunnahs.

Tried before Mr. E. Bentall, additional sessions judge of 24-Pergunnahs, on the 20th January 1853.

Remarks by the additional sessions judge.—On the 7th of December 1846, my predecessor reported as follows on the trial of six persons who were convicted and sentenced by him on that day. "The prisoners were charged with having, in the course of a dispute about the right to cultivate a piece of ground held by one Sunnassee Lushker, attacked the deceased and two others who were labouring upon it, and treated them so seriously that Juggomohun Lushker died shortly afterwards from the injuries he received. The presence of the prisoners on the occasion of the assault, and the part they severally took in it were facts which the evidence placed beyond a doubt." Five of the prisoners so reported on were sentenced to three years' imprisonment without irons, and to pay a fine of 50 rupees each, or in default of payment to labor until the fine be paid, or the term of sentence expire. On the present trial there were three persons present including one who prosecuted the case, who had witnessed the dispute, and who, when the case was investigated by the magistrate, had all stated that this prisoner was present on the occasion of the affray; one of them, *viz.:* Kashenath Pyek, contradicted himself before me, and I was obliged very frequently to remind him of his oath; but the others gave more decided evidence, although it was evident that they were unwilling to prosecute the prisoner. The evidence of the witnesses is strengthened by the circumstance of the prisoner having absconded for so long a time. During the trial the prisoner allowed that he was well known to the witnesses. His defence was, that at the time of the affray he was at a distant place called Gelasur and he called several witnesses who said so, but the length of time that has elapsed would prevent their remembering, as they pretended to do, and there is no reason for believing them.

1853. June 1. Case of BIRJOMOHUN HOLDAR.

Sentence passed by the lower court.—Imprisonment without irons for three (3) years and to pay a fine of fifty (50) rupees, within two weeks, or in default of payment to labor.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—I see no reason to interfere with the sessions judge's sentence. The prisoner has produced no proof of his having all along been at his own village. His witnesses speak of two, three and four Birjomohuns living at Gokool Ñuggur, and add that *the* Birjomohun who was concerned in the death of Juggomohun Lushker, is dead; how they can take upon themselves to assert, this they do not show. None of the several Birjomohuns said to be living at Gokool Nuggur have been cited by the prisoner. The law officer and sessions judge discredited the evidence of the prisoner's witnesses, which certainly is not such as can be relied on and much better might have been produced.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

KARTICK LOONEEAH
versus
CUNTABAR LODAH.

MIDNAPORE.

1853. June 1. Case of CUNTABAR LODAH.

Conviction and sentence passed by the sessions judge on a prisoner charged with dacoity attended with wounding, confirmed in appeal; the prisoner having confessed, and produced his share of the stolen property.

CRIME CHARGED.—1st count, dacoity accompanied with wounding, in having committed a dacoity in the lodging-house of the prosecutor, wounded witnesses Nos. 14 and 15, and plundered property to the value of rupees 282-9-3; 2nd count, aiding and abetting in the above dacoity, and 3rd count, knowingly having in his possession property acquired by the above dacoity.

CRIME ESTABLISHED.—Dacoity attended with wounding.

Committing Officer—Moulvee Gholam Sufdur, law officer, exercising powers of a magistrate.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 10th March 1853.

Remarks by the sessions judge.—The prisoner pleads not guilty. It is in evidence that the prosecutor is a travelling merchant and had taken lodgings in a village, in order to purchase tusser cocoons in the neighbourhood, he had collected a quantity, when on the night of the 29th December, his house was attacked by a gang of thieves, about 30 in number, who severely wounded the witnesses Bolachand and Luchmun Mahato, and carried off property to the value of rupees 282-9-3.

The thieves were traced by their foot marks the following day to a village, a short distance off, and there the prisoner

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LODAH.

and another party, Seedam Naik, were arrested. The persons of these two had also been recognised by Luchmun Mahato in the scuffle that occurred before the thieves entered the house. The prisoner confessed in the mofussil and before the magistrate, and produced from its place of concealment in the jungle, a quantity of cocoons tied up in a blanket, his share of the plunder.

In this court the prisoner pleads an *alibi*, which he is unable to substantiate; on the contrary one of the witnesses he cites (his adoptive father) gives him a bad character, and states that for some time past he, prisoner, has taken to vicious courses.

The evidence of the guilt of the prisoner is clear and conclusive and, as the crime was attended with aggravating circumstances, he is sentenced to seven (7) years' imprisonment and two (2) years additional in lieu of stripes, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The prisoner confessed in the mofussil and before the magistrate, and produced the plundered property which had fallen to his share which he had buried. The witnesses cited for the defence state, they know nothing in favour of the prisoner. They are his relatives.

The sessions judge's sentence is confirmed in appeal.

PRESENT:

H. T. RAIKES, ESQ., *Offg. Judge.*

GOVERNMENT

versus

GOUR MOHUN GHOSE.

RUNGPORE.

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June 3.
Case of
GOUR MOHUN GHOSE.
Prisoner charged with wilful murder acquitted, the evidence of the chief witnesses being inconsistent with their own conduct on the occasion.

CRIME CHARGED.—Wilful murder of Joogul Kishore Sircar

Committing Officer—Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. W. Bell, officiating sessions judge of Rungpoor, April 1853.

Remarks by the officiating sessions judge.—The murder occurred in the bazar at Bograh, and seems to have been perpetrated under circumstances of great atrocity. The deceased was the uncle and benefactor of the prisoner, who appears to have seduced his wife, debauched his mistress, and is accused of attempting to poison the deceased before the murder took place.

Witness No. 1, Cosseenath Sircar, a relation of the deceased, and residing with him:—States, that on the 4th of Chyte, (16th March) the deceased ate his meal and went inside to sleep and the prisoner, deceased's mistress (No. 5,) and a brahmin, whose

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Case of
GOUR MOHUN GHOSE.

name I do not remember, remained in the verandah talking and eating *pawn*. I ate my dinner, joined them in the verandah and afterwards went up stairs to sleep. The cold wind arising blew open the window, and awoke me, and I heard the noise of two blows and a groan from Joogul Sircar and some one speaking. I afterwards heard something walking over dry leaves (but whether a man or cow, I do not know) to the South of the house, I again went to sleep and was awoke about 3 o'clock by Jeetoo, (witness 4,) calling to his master, and I then saw Gour Mohun, the prisoner, laying down beside me but not asleep. Jeetoo then came and told me that he had called the deceased several times, but that he did not answer and that the door was closed. On hearing this the prisoner began trembling and we then went down stairs, and we knocked at the door, and called the deceased several times but got no answer. The prisoner then took a *lotah* and went to ease himself. We called again, the prisoner having returned stood by the well and Jeetoo told him the deceased would not answer, to which he replied " if he will not answer you what can I do." I then went to the Eastern door which was also shut and called out, and Jeetoo and prisoner went to the South and I heard them open the window and the prisoner began to say to Jeetoo, that my uncle, or Joogul Sircar, has cut his throat and I see the handle of the axe, I then went round but before I got there, the prisoner said the deceased had cut his throat and killed himself. I said why should a good man kill himself. The prisoner then began trembling and said what is to be done; after some conversation I said give notice at the thannah, but the prisoner suggested calling Joynath Ghose and seeing what he advised, he also said the deceased had been ill and perhaps died in the night from that, and recommended burning the body at night. I then called Joynath and the prisoner told him the deceased was dead, and he told us give notice at the thannah. He also asked where Tenoo (witness No. 5, mistress to the deceased) was, the prisoner said she is gone home. He then asked if there had been any words between deceased and No. 5, and prisoner said yes, about going into mofussil. The woman was called and she said she knew nothing about it, that she left Gour Mohun standing in the verandah when she went home. Jeetoo, I and the prisoner gave information at the thannah. The darogah knew of the old grudge about the woman, and therefore, sus. pected the prisoner. I heard from the deceased that the prisoner had debauched his mistress, No. 5, and that he had turned him out of his house, but after a few days let him come back again. When I first awoke I did not observe any trace of the blood on the prisoner, but he was trembling. I first saw the corpse when the darogah came to the house, and

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June 3.

Case of GOUR MOHUN GHOSE.

I asked the prisoner if he killed deceased because I knew of the affair with the woman. The deceased told me that the prisoner had tried to poison him.

Witness No. 2, *Buddun Chunder Doss*—Was staying in the house, watching the progress of a law suit. On the evening the deceased ate his dinner and went to sleep, I remained up eating *pawn*; witnesses Nos. 1, 5 and 8, and the prisoner were eating *pawn* in the verandah, I lay down but did not sleep. No. 1 went up stairs to sleep and the woman and No. 8 went away. I heard the noise of the shutting of the door before I went to sleep, I went out to make water and heard the noise of a blow and groaning; I wondered what the noise could be; I saw the prisoner coming out of the window of the Southern side and he went in again to the house. He was trembling, I followed him and saw him go up to the room where witness No. 1 was. Jeetoo came in after eating his dinner and tried to awake the deceased; but the door was shut and he could not, and he went to Gopeenath (No. 1) and told him he could not awaken the deceased. The witnesses Nos. 1 and 4, and prisoner then came down and called out, and I asked them why they could not awaken him; they replied the door was shut. Jeetoo and the prisoner then went to the Southern window and after some little talking as to who should look in, the prisoner went round and told Jeetoo that the deceased had cut his throat with an axe, they came back and when I asked them what it was, Jeetoo said the prisoner said that Joogul Sircar was dead; I told them to give notice at the thannah, but the prisoner said send for Joynath who will advise; No. 1 called Joynath and the prisoner told him, and he advised giving notice at the thannah, the prisoner then wanted Tenoo, No. 5 called, but we demurred. The prisoner and Joynath then called her and told her that the deceased was dead. She abused him and said you have done this mischief, we urged intimation being given at the thannah, but he said at night will burn the body; I, therefore, desired Jeetoo to go and he started, but the prisoner following him both went together.

Witness No. 3, *Burrooah.*—Had been a servant of the deceased for two months previous to the occurrence. On that night deceased, his mistress, (No. 5,) No. 1, and the prisoner had eaten together; deceased had gone to sleep and not gone up stairs and the prisoner remained alone, witness No. 2 being asleep near them. The prisoner came and told him that there was a dustuck out against him (the prisoner) under Regulation VII. and in no account to let any one in. Witness then went out and commenced smoking, and the prisoner went inside, the witness also was going in but the prisoner desired him to remain out side which he did, witness then repeats the

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story of Jeetoo coming in the morning, the discovery, &c., &c. He heard no noise and denies that he said he had done so in the foujdarry court. Witness knows of the quarrel between the deceased and the prisoner about the woman.

Witness No. 4, *Jeetoo, the other servant of the deceased,*—States, that his master and the others had had their dinner and he went home to his evening meal, after which he returned to the house and finding the door shut attempted to awake the deceased, but could not; that he, therefore, went up stairs to where the prisoner and Goopee were and found the former awake, the latter asleep. He told them he could not succeed in awaking the deceased; the prisoner seeemed in a great state of trepedation and trembling; they all went down and the prisoner went to the well after easing himself; but his hand trembled so much he could not get water, and witness asked him why he was in that state, he said because my uncle does not reply I am alarmed; they then went to the window at the South and the prisoner opened it and went in and said that his uncle had cut his throat and killed himself. Gopee, No. 1, and witness then urged him to go to the thannah, but he said he would hear what was said first, they called her and prisoner then said it was useless giving intimation at the thannah and far better to burn the body, and said he had died, upon which witness said if you do not give intimation at the thannah, I will, and started for that purpose, when the others followed and all went to the darogah who came, &c., &c. The prisoner debauched Tenoo (No. 5) and there was a quarrel in consequence, and he was turned out of the house. Witness once saw him and Teenoo together and told deceased. First the prisoner seduced deceased's wife and then debauched his mistress, therefore they quarrelled and he thinks prisoner killed deceased. He saw no marks of blood upon him.

Witness No. 5, *Teenoo, the mistress of the deceased,*—Tells how that they all fed together after which they ate *pawn* and smoked, and Goopeenath went up to sleep; that she then told the deceased she had not been out because he was ill, and that now he was better she wanted to go and see her friends; that he gave her permission and she was going with Baroolah, but afterwards went with Surroop fukeer (No. 8,) whose house was in the same place as her friends. After eating, &c., Surroop proposed going when Goopeenath and the prisoner came up in a state of flurry and told her to come home quickly, she asked why, but got no answer, and they hurried on; when they nearly got there Gour Mohun said do not make a noise my uncle has cut his throat and killed himself; that she ran on and found the door shut, the prisoner again urged her to be quiet and said when night came, we will burn the body but

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Jeetoo, said, that he had eaten Joogul's salt and would give intimation at the thannah; that she and Jeetoo started, but that they did not allow her to go, and Goopee and the prisoner went with Jeetoo. The darogah came, &c., &c. Witness had connection with prisoner but against her wishes, and in consequence there was a quarrel with prisoner and the deceased, and the latter told her the prisoner had seduced his wife and attempted to poison him.

Witness No. 6, *Myaram*,—Knows nothing of the murder; but some few months before the prisoner came to him and said, that there was a quarrel between his uncle and him and he could not remain in the house. He, therefore, remained in witness's house for a few days after which he returned to his uncle.

Witness No. 7, *Surroop Sheik*—Confirms the evidence of the other witnesses as to position of the parties. Jeetoo's attempt to arouse deceased, &c., &c. He also knows of the intrigue &c.

Witness No. 8, *Surroop fukeer*,—Confirms the evidence of No. 5, as to the circumstances of the evening, their going home together, and being met by Goopee and the prisoner, the latter in a state of agitation on their way back. He also knows of the intercourse which he states was against her wishes.

Witness No. 9.—Merely confirms Jeetoo's story and heard of the finding the deceased with his throat cut, he was told by deceased of the intrigue and believes Gour Mohun murdered him.

Witnesses Nos. 10, 11, 12, and 13.—Depose generally to the quarrel and its cause.

Witnesses Nos. 15, 16 *and* 17.—Witnesses to the sooruthal.

Witness No. 19.—The apothecary, Mr. Taylor, states, that the wounds upon the body were two severe wounds on the left side of the neck and throat, one in the left cheek and a blow on the forehead inflicted after death. He states that either of the wounds in the throat or neck would have caused death, and assigns a good reason for its being impossible they were self-inflicted.

Defence.—In his defence the prisoner denies and states that he believes Teenoo and her paramours committed the murder. He denies having debauched either the wife or the mistress, and utterly denies all misunderstanding between him and the deceased and declares he is the victim of a conspiracy. His witnesses were called.

Witness No. 19, *Gooloo.*—Merely knows that they were all eating and talking together that evening.

Witness No. 20, *Chunder Sircar.*—Does not know that there was any quarrel between them.

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Witness No. 21, *Gokul Doctor.*—Knows nothing of any illness he never gave deceased medicine.

Verdict of the jurors.—The case was tried by the jury named in the margin,* who returned an unanimous verdict of guilty of wilful murder, in which I agree. The prisoner offers no defence nor does he assign the slightest reason for accusing the woman he had much to lose in her protector, and nothing to gain by his death. I see no reason for discrediting any of the witnesses, and can only come to the conclusion that the prisoner committed a barbarous murder upon his uncle and friend, and not seeing the slightest thing to palliate his guilt, I recommend him for capital punishment.

* Kishen Kant Gangoolee, Rughoonath Muzoomdar Gour Chunder Bose.

Opinion and recommendation of the sessions judge.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The sessions judge, in recapitulating the evidence of the witnesses, describes the murder as having taken place in the *night time*, this is quite a mistake, the deceased went into his room to sleep after his mid-day meal about 12 o'clock in the day time, and was found dead with his throat cut about 4 in the afternoon; the murder must therefore have been perpetrated in the interval.

It appears that on the day in question, and at the time above indicated, there were three other persons in the house besides the deceased, namely, the prisoner Gour Mohun and the witnesses Budden and Gopeenauth. Budden says that after the deceased had retired to his room to rest about mid-day he also went to an adjoining room and laid down to sleep; that he was awoke by hearing a window open and went outside the house to make water, while so engaged he distinctly heard the blow of an axe in deceased's room and some one groan, and shortly afterwards the prisoner came through the window of deceased's room; on seeing the witness, the prisoner seemed to tremble and turned to the back of the hut; witness then followed him and saw him enter the house and go upstairs to where Gopeenath was sleeping; witness then returned to his own bed and slept till Jeetoo roused him and they discovered the murder.

Gopeenath deposes that he went upstairs to rest after mid-day and was awoke by the wind and then heard distinctly repeated blows of an axe in deceased's sleeping room followed by the groans of some one in pain; that shortly afterwards the prisoner came into the room where he was lying and laid down; about 4 in the afternoon the witness Jeetoo says, he came to the house and finding the door of his master's (the deceased) sleeping room shut, called to him; but getting no answer, he called

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the prisoner and the two witnesses just named; and the prisoner after much hesitation looked into the deceased's room and immediately said he was dead and had committed suicide. The only direct evidence against the prisoner is the testimony of Buddun to the effect, that he actually saw the prisoner leaving deceased's room just after hearing the blows and groans proceeding from it. But it seems to me altogether incredible that if the witness really heard the blows and the groans, and saw the prisoner leave the room in the state of agitation he describes, and slink away with the apparent intention of avoiding him, he should quietly return to his own bed and sleep there till Jeetoo awoke him. It must be remembered that all he describes happened in broad day-light, and in the middle of a populous town, where assistance must have been at hand if wanted, and it is, therefore, impossible to account for the witness's conduct on the score of fear, or in fact to reconcile it in any way with a belief in the truth of his statements. Gopeenath's tale is little better; he also says he heard repeated blows in the deceased's room followed by groans, and was struck by the prisoner's manner when he came up stairs shortly afterwards, yet he remained where he was till Jeetoo summoned him, and though questioned by Jeetoo regarding his master, never gave utterance to these matters, till the police took up the inquiry.

The evidence of these witnesses I consider wholly insufficient to bring the charge home to the prisoner, notwithstanding the enmity, which is said to have existed on his part, towards the deceased. It is also worthy of remark, that although the prisoner must have been in the presence of these witnesses, and under their observation from the time of the murder till the arrival of the police, no blood or other traces of the deed were seen or discovered on his person or clothes. This the deputy magistrate accounts for by stating, that the deceased's position on his charpoy was such that a person standing in the door-way of another room might have reached the head and throat of the man, and inflicted the wounds without coming in contact with the blood from the body. Be this as it may, there was apparently no such criminating evidence against the prisoner which is a feature of the case in his favour, for the head must have been nearly severed from the body and the effusion of blood very considerable. I dissent therefore from the judge and the jury in the opinion of the prisoner's guilt, and consider him entitled to an acquittal.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT AND BHUGGY BAORIN

versus

BEHAREE SONAR.

HAZAREEBAGH.

1853.

June 7.

Case of BEHAREE SONAR.

Prisoner convicted of rape on the person of a girl aged ten years, and sentenced, the case being one of great aggravation, to ten years' imprisonment.

CRIME CHARGED.—Rape upon Bhuggy Baorin, prosecutrix.

Committing Officer—Captain G. N. Oakes, 1st class assistant agent to the Governor General at Manbhoom.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 3rd May 1853.

Remarks by the deputy commissioner.—The prisoner is charged, with having committed rape on the person of Bhuggy Baorin. He pleads not guilty.

The prosecutrix states that at about 8 P. M. she, in company with a little girl named Taree, and another girl named Oolee, was passing the work-shop of one Dataram, a carpenter, when the prisoner, Beharee Sonar, seized her and carried her in his arms to a tiled house near the police station, and having closed the door and stopped her mouth with a cloth, he committed a rape on her. The child, Taree, stood crying outside the door and Oolee ran to inform the family of the prosecutrix of whom Nuffer and Taramonee with others, presently came and began to abuse Beharee, who, thereupon released her and opened the door. Taramonee then carried the prosecutrix home; prosecutrix was bleeding, she has not yet reached woman-hood. The house, into which she was taken by the prisoner, belongs to him. It is distant only a few paces from the place where he seized her.

No. 1 *witness, Taree.*—A child about 7 years old. Believes in *sib;* believes that speaking the truth will please him; states that she saw the prisoner seize the prosecutrix and carry her into a house. He shut the door and witness stood outside. Prosecutrix was crying inside. Witness stood there a long time, till her parents came and took away the prosecutrix. The night was dark; witness knew the prisoner; he is of short stature.

No. 2 *witness, Oolee Baorin.*—About 7 P. M., was coming along with the prosecutrix and the girl Taree; when at the carpenter's shop the prisoner, Beharee Sonar, seized the prosecutrix and carried her into his house. Witness began to cry and was advised by Gillee, the tailor, to go home and inform the family, which she did. The night was dark; no, it was moonlight. Witness was within a few feet of the prisoner, and recognized him distinctly.

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No. 3 *witness, Gillee tailor.*—Between 7 and 8 P. M. was sitting with some others at his house, smoking, and saw the prisoner, Beharee, seize and carry away the prosecutrix Bhuggy; witness knew her before, having frequently seen her in the street.

No. 4 *witness, Sookha Syce.*—Corroborates the evidence of Gillee.

No. 5 *witness, Sreemuttee Korunganee.*—One evening about 7 P. M. saw the prisoner, Beharee Sonar, seize and carry away the prosecutrix; witness told the girl, Taree, who was crying, to go and tell her friends. Witness saw these two girls only.

No. 6 *witness, Bhobanee Syce.*—Corroborates the evidence of Gillee and Sookha.

No. 8 *witness, Cheedam Baoree.*—About 8 P. M. Oolee and Taree brought news of the prisoner having seized the prosecutrix, whereupon witness, with Nuffer and others, went to the prisoner's house and began to abuse him; prisoner then opened the door and brought out the prosecutrix, who was carried home by Taramonee; prisoner spoke and threatened violence. Prosecutrix was bleeding and said that the prisoner had committed rape on her; witness heard the prisoner say that the prosecutrix had consented, but prosecutrix said that she had not. Witnesse's name is Cheedam.

NOTE.—This witness really No. 8, came when the witness No. 7, was called, and the writer of the depositions entered the name of Shiboo.

No. 7 *witness, Shiboo.*—States nothing material.

No. 9 *witness, Doctor M. O'Sullivan.*—States, that he examined the person of the prosecutrix about five days after the fact, and believes that she has recently had sexual connection, but cannot say that it was forcibly effected. If the girl were an European, he should say that she has not attended the age of puberty; but as to a native, he cannot give a decided opinion. Thinks that the prosecutrix is not above 10 years of age.

No. 10 *witness, Taramonee.*—About 8 P. M. Oolee Baorin came and said that the prisoner had carried off the prosecutrix, and on hearing this, witness with others went to the prisoner's house and called to him, and he then brought out the prosecutrix, who came limping to witness who carried her home. Prosecutrix was bleeding; she said that the prisoner, Beharee, had violated her; witness complained to the principal assistant next morning. The prosecutrix has not obtained puberty, she is but a child. Witness has a daughter, named Saree. This Saree is now in the prisoner's house; she has become the

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concubine of the prisoner's son. She was taken to his house on the day after the rape on the prosecutrix.

No. 11 *witneess, Bindee Baorin, and No.* 12 *witness, Doagee Baorin.*—These corroborate the evidence of Taramonee.

No. 13 *witness, Peer Bux.*—On the evening of this occurrence, witness heard Nuffer Baoree's wife and other women, abuse the prisoner, saying that being wealthy he had used the child thus; prisoner said he had not done any thing.

No. 14 *witness, Nuffur Baoree.*—Corroborates the evidence of Taramonee.

Defence.—The prisoner in his defence states, that on the 28th Chyte at 6 o'clock, his son brought Saree Baorin, the daughter of Nuffer Baoree, to the prisoner's house, and at about half past 7 P. M. Saree's mother, Taramonee, and other females of the same tribe, came to take away Saree; prisoner and other persons, witnesses for the defence, were then sitting and singing in prisoner's shop. Taramonee called to her daughter, Saree, to come away and was disputing with her. Prisoner then asked Saree, who had brought her there, and she replied that his son had. Prisoner told her to go home, but she said that she chose to stay and that if she went home, they would beat her; prisoner said to Taramonee that if the girl would not go now, she might come for her in the morning. They then abused him, and prisoner seeing Koonjul Sing, burkundauze, approach, said to him look, these people are making a disturbance without cause. Koonjul then forbade them. If he say otherwise now, there is no help for it. Ram Sing, burkundauze, was cooking his food close by, he forbade them.

No. 15 *witness, Shib Churun Komar.*—About 35 days ago at 7 P. M. witness was sitting at the prisoner's house, when four women came and called Saree, who said she would not go. Then they began to abuse the prisoner, who went to the police station and asked protection. Koonjul Sing came and forbade them. Witness did not see the prosecutrix at that time. One night (afterwards) at 10 P. M. the prisoner took witness to Ruhomot Khan's house where witness saw Sreemotee and Dataram and Nuffer sitting together. Witness did not hear what they said.

No. 16 *witness, Gungapersad Mistry.*—One evening about 25 or 26 days ago, witness was sitting at the prisoner's shop where there was singing and music, and then four or five women came and began to abuse the prisoner, who told them to come for Saree in the morning. They would not attend to what he said, so he brought a police man from the station, who persuaded them to go away; witness did not see the prosecutrix there; heard nothing of a rape; did not hear Saree speak.

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No. 17 *witness, Ibrahim.*—To the same effect generally. The woman Saree, said she would not return home. Witness sat on a large stone near the prisoner's house.

No. 18 *witness, Nuffer Sircar.*—At about 7 P. M., on the evening of the 28th Chyte, witness was passing the prisoner's house and saw some Baorees making a disturbance; asked them what was the matter, and was told by Joolpie's mother that the prisoner has committed a rape. Does not clearly remember on whom.

No. 20 *witness, Harroo Sing.*—On the 28th Chyte was at the prisoner's shop from 6½ till 9 P. M.; some women came and called Saree, who said she would not go home. On which they abused the prisoner, who then called Koonjul Sing, who sent them away.

No. 21 *witness, Skeikh Lalloo.*—Was at prisoner's shop at 7 P. M., when some women came and called Saree, who would not go with them. They threatened to take her by force. Witness sat on a large stone near prisoner's house; no one else was sitting on the stone.

No. 23 *witness, Gocool Mistree.*—On a Sunday morning, at 8 o'clock, saw Nuffer Baoree and his wife making a disturbance at the prisoner's house; they said "give cloth and pice;" one Emam, who was there said, "give up their things," on which a woman named, Saree, speaking from inside the house said, I wont give them. Witness bid them not to make a noise; Saree did not come out. Witness knew her by her voice. One night at 9 P. M. witness saw Sreemotee and Dataram and Nuffer Baoree sitting at Himut Khan's house. The prisoner took witness there and said, see how they are conspiring together. Witness did not hear what they said.

No. 25 *witness, Saree Baorin.*—For two or three months past, witness has cohabited with the prisoner's son, Ramlal. On a Saturday evening in Chyte about 6 P. M., witness went to the prisoner's house, and at 7 o'clock her mother and aunt and Doyea Baorin came to take her away. She said she would not go. Prisoner told them to come in the morning. Next morning her father and mother came and wanted to take away her clothes, she said she had earned them and would not. They then threatened to take her life, and said they would test the prisoner's wealth and ruin him. This case has been got up on account of witness. The witness's husband is living; he has deserted her for a year past. She never lived with him. Is now a prostitute. The ornaments that she is wearing, were given by the prisoner's son.

No. 26 *witness, Ram Sing, burkundauze.*—At 8 P. M., on the 28th of Chyte last, three women Baories were abusing the

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prisoner and saying he had taken their daughter by force. He said she had come of herself and they might take her if she would go. The women then said to-morrow we will see what money you have got.

No. 27 *witness, Mothur.*—At 10 P. M., on the 10th or 11th (April,) Hariprosad Tirbeedee sent witness to the prisoner to say, that they are low people, pay them a few rupees and satisfy them. Prisoner replied that he would not; witness does not know what concern Hariprosad Tirbeedee has with this case. She saw some of the witnesses sitting near his door.

No. 28 *witness, Shaboo Bhuckut.*—About 15 or 16 days ago at 10 P. M., the prisoner brought witness to Rohomut Khan's door, where witness saw Sreemotee Baorin, Nuffer Baoree and others sitting together. Does not know what they said. Rohomut named Beharee, but after witness went, they were silent.

The jury whose names and occupations are entered below,* find the prisoner guilty of an assault on the prosecutrix.

In my opinion the evidence of the prosecutrix and of the witnesses for the prosecution, fully establishes the fact of a rape having been committed by the prisoner on the prosecutrix. The tenor of the *defence and the evidence* in support of it, only give another, and, as I consider, a false colouring to the facts. The intention is to substitute the abandoned girl Saree, as the person about whom the outcry was made at the time of the occurrence, and to show that the present charge is trumped up. On the face of the calendar, it would appear that some delay occurred in bringing the charge, but in truth there was none. The fact occurred on Saturday night, and on the following (Sunday) morning the complaint was verbally made by Musst. Taramonee to the principal assistant. Monday and Tuesday were holidays, on which the assistant's court was closed, so that the written charge was not received until Wednesday, the 13th April. Under all the circumstances of this case, and giving to the prisoner the benefit of any doubt as to the age of the prosecutrix, who seems to be nearly of the age of puberty, I would recommend that the prisoner be sentenced to imprisonment for (7) seven years with hard labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Bart., and Mr. H. T. Raikes).—The deposition of the prosecutrix, a child of about ten years old, which has been clearly and consistently given throughout,—supported as it is by the evidence of the girl Taree, who was examined as to her sense of the obligation of an oath, and that of *Oolee,* a girl of sixteen or seventeen years of age, together with the depositions of Gillee Khaleefa, Sookha Syce, who saw the prisoner forcibly carry off

* Buckernath Mookerjee, moktar—Junordun sircar, moktar.

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the prosecutrix into his house, and the further evidence of Taramonee Baorin, Bindee Baorin, and Doagee Baorin, the first of whom carried the prosecutrix in her arms home, and with the other two women saw the child's state when she was turned out of the prisoner's house, which he had fastened inside, all of which statements are given in the most natural way and vary in no manner from first to last,—afford full and clear proof of the prisoners guilt. In his defence, he has cited several witnesses to establish that one Saree, not the prosecutrix, with whom prisoner's son had recently formed an intimacy, was the party in his house, about whom a disturbance took place on the night of the 9th April last. None of the witnesses prove that Saree was in fact the individual there on *that* day; they merely speak of a day, or name some other day, and none of them depose to having seen her on that day; they heard her only.

But setting aside the very unsatisfactory nature of this evidence; if it were true it would not account for the state of the child when taken out of the prisoner's house, which is sworn to by the women who carried her home and saw what had occurred, or in any degree affect the credibility of the evidence for the prosecution.

The deputy commissioner has recommended a sentence of seven (7) years with hard labor and irons. The case is one of great aggravation, and is proved by such evidence as is not always attainable. We deem it necessary to make an example of the prisoner, and, being of opinion that, under the circumstances, the ordinary sentence awarded in cases of rape is inadequate to the offence of which he is proved guilty, we sentence him to ten (10) years' imprisonment with irons and labor. We observe that the verdict of the jury declares the prisoner guilty of assault; they credit the evidence for the prosecution, so far as regards the assault, and the state of the child when first seen after her release from the prisoner; here they stop short, and do not consider the prisoner proved guilty of the crime charged, namely, rape.

The inconsistency of the verdict is apparent and not reconcilable with the weight they attach to the evidence for the prosecution, which they admit to be good, though they do not give it effect.

PRESENT:

J. R. COLVIN, ESQ., *Judge*.

GOVERNMENT AND DUSTOOLLAH

versus

JUNJAL (No. 7), HAOOREEAH (No. 8), BUSUTOOLLAH (No. 9, APPELLANT), DEANUTOOLLAH (No. 10), TUHUBIL NOSYA (No. 11), AMOOLLAH TELEE (No. 12), BANKAH NOSYA (No. 13), JHANPRA HURREE (No. 14, APPELLANT), TUN MAHOMED (No. 15), AND WOOKEEL NOSYA (No. 16).

RUNGPORE.

1853.

June 8.

Case of BUSUTTOOLLAH and JHANPRA HURREE (APPELLANTS) and others.

A prisoner convicted of dacoity acquitted on appeal, the evidence against him being insufficient. The appeal of another prisoner rejected.

CRIME CHARGED.—Nos. 7 to 16, 1st count, committing docoity, attended with wounding, in the house of the prosecutor, and plundering property, value Rs. 151; 2nd count, accomplices in the above crime; 3rd count, having belonged to a gang of dacoits, Nos. 7,14 and 16, and 4th count, taking and having in possession property acquired by the above dacoity, knowing it to be so acquired.

CRIME ESTABLISHED.—Nos. 7, 8, 10, to 16, dacoity, and No. 9, being accomplice in dacoity.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried by Mr. W. Bell, officiating sessions judge of Rungpore, on the 21st March 1853.

Remarks by the officiating sessions judge.—From the statement of Dustoollah, the prosecutor, and the evidence adduced on the trial, it appears that the prosecutor and his wife had taken their meal and gone to sleep, on the 16th January 1853; early in the morning he was roused by a light and thinking a neighbour's house had caught fire, he went out to see, when he found some 25 men outside and discovered that the light proceeded from their mussals, he immediatly raised the alarm and the neighbours came and the dacoits fled, but they succeeded in securing Junjal with the property on him.

Witness No 1, *Tollah Nosya*, the servant who was wounded, deposes, that on the night in quesiton after the evening meal he went to sleep on a box outside the inner compartment, and was awoke early in the morning by a light which he supposed to be a house on fire; he therefore took his lattee and was going there, when he found himself surrounded by the dacoits; he raised the alarm, and the dacoits beating him, he ran away. By the light of the mussal, he recognized the prisoners Nos. 8 to 13.

Pauchcowree Chowkeedar, witness No. 2, heard a noise in the direction of prosecutor's house and going there was met by a man, Junjal, prisoner No. 7, running away with the

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property, and with the assistance of the neighbours succeeded in securing him, when he confessed who he was, &c. Witnesses, 3 to 10, all confirm the facts of the dacoity, the seizure of Junjal and the property found, being the prosecutor's.

Witnesses Nos. 4, 5, 6, 7 *and* 9 *to* 12, prove the mofussil confessions of prisoners Nos. 7 to 16.

Witnesses Nos. 13 *to* 17, prove the foujdaree confessions of prisoners Nos. 7 to 12 and 14 to 16.

Witnesses Nos. 1 *to* 8, 12 *and* 18 *to* 21, prove the production of the property, Nos. 1 to 13 and 15 to 21, by the prisoners, Nos. 7, 14 and 16.

The prisoners all confessed before the doragah and with the exception of prisoner No. 13, all again confessed before the magistrate, implicating each other. Before the sessions, they all deny the fact and their confessions.

Prisoner No. 7, pleads, that the prosecutor and witness No. 2, have made the story against him, but can bring no proof; he confesses to having been in the Dinagepore jail for burglary and brings forward witnesses, 23, 24, and 25, to prove his respectability.

Prisoner No. 8, pleads *alibi* and ill-usage at thannah. His witnesses, Nos. 26 and 27, prove him to have been respectable. No. 30, denies any knowledge of him or his ever being at his house on that night, and Nos. 29 and 31, say, they knew nothing of ill-usage at the thannah.

Prisoner No. 9, only confessed to being an accomplice before the darogah and magistrate. Here he denies and pleads ill-usage, but his witnesses, Nos 32, 33, 34, and 40, can prove nothing.

Prisoner No. 10, pleads *alibi* and ill-usage. His witnesses, Nos. 32, 34, 37, 38, 40 and 41, can prove nothing; do not know where he was on that night and know nothing of ill-usage at the thannah.

Prisoner No. 11, declares he was starved and ill-used at the thannah, and does not know what he said before the magistrate. His witnesses, Nos. 26, 27, 29, 42, 43 and 49, can prove nothing; do not know where he was on that night and know nothing of ill-usage; and No. 31 has heard he was beaten at the thannah, but cannot tell from whom he heard it.

Prisoner No. 12, pleads ill-usage, but his witnesses, Nos. 26, 27, 31, 45, 48, 49 and 50, know nothing about it.

Prisoner No. 13, denies and says Junjal implicated him, because he had a quarrel with him, and his witnesses, Nos. 51 and 53, state there was a quarrel. He does not say why the other prisoners implicated him or why he confessed.

Prisoner No. 14, denies his confession and declares the shawl, he had produced to the darogah, is his own. His wit-

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nesses, Nos. 49, 58, 60, 61 and 62, all deny any knowledge of the shawl being his or of ill-usage.

Prisoner No. 15, says his confession was extorted by the darogah, and the burkundauze compelled him to repeat it before the magistrate. His witnesses, Nos. 30, 47, 49 and 63, know nothing about it.

Prisoner No. 16, declares he was ill-used, but fails in proof, although he called witnesses Nos. 63 and 70 to 76.

I tried the case alone, under Act XXIV. of 1843, and seeing no reason to doubt the facts and confessions, sentence them all to ten (10) years' imprisonment each, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—The prisoners, No. 9, Busutoollah, and No. 14, Jhanpra Hurree, have appealed.

As regards the first the evidence is weak. The sessions judge states in his remarks that this prisoner "confessed to being an accomplice before the darogah and *magistrate*," but his so called confession before the magistrate, is a distinct denial of his guilt. It says that he was pressed to join the party of dacoits before they set out, but that, though threatened, he positively refused to go. The evidence against him is, therefore, only his mofussil confession and the statement of the witness No. 1, Tollah Nosya, that he recognised by the light of the mussal, on being aroused from sleep by the alarm of the dacoits, six of them, including from Nos. 8 to 13. Such a statement is little to be depended upon. The witnesses for the prisoner speak to his being a man of some respectability in his village, having a half share in a jote-jumma paying rupees 48 a year, &c. On the whole, I think the proof against this prisoner (No. 9, Busutoollah,) insufficient to sustain the conviction, and acquit him.

The sessions judge must explain why he described the confession of the prisoner before the magistrate in such terms.

The case against the prisoner No. 14, Jhanprah Hurree, is supported by his confession to the magistrate, and his witnesses say nothing material on his behalf. His appeal is, therefore, rejected.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT AND KOOSALL NUSHO

versus

AMEEROOLLAH, ALIAS KALAPAR (No. 7), FARAZ NUSHO (No. 8), KHUTTOO NUSHO (No. 9), AND NETCHROO NUSHO (No. 10.)

RUNGPORE.

1853.

June 8.
Case of AMEEROOLLAH and others.

In a case of riot attended with loss of life, the principal having been convicted of culpable homicide, the conviction of his accomplices was altered to correspond with that finding. Appeal rejected.

CRIME CHARGED.—Prisoner No. 7, with riot, attended with murder of Phool Mahomed, the brother of the prosecutor; and on a 2nd count with the culpable homicide of the said Phool Mahomed, the brother of the prosecutor; prisoners, Nos. 8, 9, and 10 with being accomplices, aiding and abetting in the said murder and riot.

CRIME ESTABLISHED.—No. 7, culpable homicide, and Nos. 8, 9 and 10 being accomplices, aiding and abetting in murder and riot.

Committing Officer—Mr. R. H. Russell, officiating joint magistrate of Bograh.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 11th April 1853.

Remarks by the officiating sessions judge.—From the evidence adduced before the court, it appears that, early in the morning of the day of the occurrence, prisoner No. 7, accompanied by 50 or 60 others, among whom were the rest of the prisoners, went forth armed with *lattees* and attacked riotously the house of Butasoo and Kulum, carrying away from thence thirteen cows; the deceased followed them, remonstrating, when prisoner No. 7, struck him on the head with a *lattee* so violently, that he immediately fell senseless to the ground and died the same day at about 10 A. M.

The three first witnesses prove the part taken by all the prisoners.

Witnesses 5 *to* 8, swear to the prisoners, with the exception of prisoner No. 10, and all the witnesses swear, to the fatal blow being inflicted by prisoner, No. 7.

The medical officer proves the death of the man to have been caused by severe injuries inflicted by a heavy blunt instrument.

The prisoners set up an *alibi.*

No. 7, states, he was at Rungpore, and produces a petition and a mookhtearnamah said to have been filed in the Rungpore civil court, but they do not prove that Ameeroollah was recognized in the court, and I discredit the defence.

No. 8, *Faraz Mahomed.*—Attempts to prove an *alibi* and produces three witnesses, who swear he never left the house, *day or night,* for 5 months.

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AMEEROOLLAH and
others.

The other prisoners set up similar defences, but, could they have established them or felt assured of their innocence, they would not have absconded for 5 months, and it is impossible; but that they must have known the search that was made for them.

The jury, Rughoonath Mujoomdar, Degumber Moitter and Haradhun Sircar, convict No. 7 on the 2nd count, and the others on 1st, being accomplices, aiding and abetting in murder and riot, and I agree with them.

Sentence passed by the lower court.—Each to be imprisoned with labor and irons, No. 7, for seven (7) years, and Nos. 8, 9, and 10, for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoners rely in their appeal, on the pleas of *alibi* stated in the sessions court. These are certainly not established. The prisoners No. 9, Khuttoo Nusho, and No. 10, Netchroo Nusho, further say, that six of the witnesses for the prosecution did not at first name them in their depositions before the magistrate, but only included them subsequently, by recognition, as having been along with the prisoner, No. 7, Ameeroollah, when he committed the outrage. These two prisoners were, however, named in the first statement made to the police by the prosecutor, the brother of the deceased, on the day of the occurrence, the 25th February 1852; and they were named by witnesses who were examined before the darogah on the 27th February. All the four prisoners absconded from their homes for above four months, and were traced and apprehended there, on the same date.

I see no ground to interfere with the convictions and sentences, except that the error, which has been noticed in the revision of the statement in the English department, must be corrected, and the conviction of Nos. 8, 9, and 10, stand as for accompliceship in riot with culpable homicide, not *with murder*.

PRESENT:

J. R. COLVIN, AND J. DUNBAR, } ESQRS., *Judges.*

GOVERNMENT AND MONSR. A. GILBERT

versus

SHEIKH GHOLAM (No. 1), AND SHEIKH JUMIUT (No. 2).

EAST BURDWAN.

1853.

June 9.

Case of SHEIK GHOLAM and another.

Prisoners charged with highway robbery convicted and sentenced to three years' imprisonment.

The prisoners and their companions, acting together in prosecution of a common criminal purpose, are responsible for the whole violence inflicted on their victim, and not merely for their individual shares in it.

CRIME CHARGED.—Highway robbery on the person of the prosecutor, Monsr. A. Gilbert, and wounding him, in which property, to the value of rupees 460, was plundered.

Committing Officer—Mr. A. Abercrombie, officiating magistrate of East Burdwan.

Tried before Mr. H. F. James, sessions judge of East Burdwan, on the 21st May 1853.

Remarks by the sessions judge.—It appears from the evidence in this case that Monsr. Gilbert, a Frenchman and professor of white magic and legerdemain, had been staying some months at the rajbaree of this station, displaying his accomplishments in that science at occasional intervals, and that during his residence here, he had employed for some months or so as his table servant, the prisoner No. 1, Sheikh Gholam. During the time that this man was Monsr. Gilbert's servant a silver spoon was lost in the house, and Monsr. Gilbert on settling accounts with his servant deducted from the amount of his wages due, 5 rupees, one month's wages, as the price of the spoon which was missing. On the 16th of this month about 9 P. M., Monsr. Gilbert started with his wife from the rajbaree in an Inland Transit Company's carriage; on their way to Chandernagore, and as they left the suburbs of the bazar and reached the Grand Trunk Road, their carriage was stopped by the two prisoners and some other persons who seized the horses bridle and caused the coachman to pull up. Monsr. Gilbert jumped out of the carriage when he was seized by the prisoners, and thrown to the ground and beaten with sticks and fists, and in the scuffle a gold watch which he wore, attached to a chain round his neck was snatched and broken from the chain and carried off. Monsr. Gilbert had with him in the carriage a small gun and on getting out, when the carriage was stopped he took it in his hand and struck the prisoner, No. 2, a severe blow on his left arm, the gun was then seized by the prisoners, who scuffled with Monsr. Gilbert for the possession of it. Monsr. Gilbert was thrown to the ground and at the same time the watch was stolen, while Monsr. Gilbert was in the hands of the prisoners

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The parties then proceeded to the magistrate's house, who visited the spot and caused the prisoners to be apprehended, and subsequently after investigation committed them for trial on the charge of highway robbery. The prisoners plead not guilty, but allow that they stopped the carriage of the prosecutor on the high road for the purpose of demanding the wages which were due to prisoner, No. 1. Monsr. Gilbert, being unable to talk the language with his servants, had, on several occasions, called in the aid of some persons attached to the rajbaree to interpret between himself and his servants. Witness, No. 12, Monsr. Andric Rossi states, that when the silver spoon was lost from the house of Monsr. Gilbert, he was asked to question the servants of the house on the subject, and the result of the enquiry was, that the prisoner, Gholam, consented to allow the price of the spoon to be deducted from his wages. Monsr. Gilbert having threatened to send him to the thannah and in order to avoid such a disgrace, this arrangement was agreed to by both parties. Witness, No. 11, also gives evidence to the same effect, and moreover, adds, that on the day that Monsr. Gilbert contemplated leaving Burdwan the prisoner, No. 1, accompanied by his father, No. 2, came to witness and asked him to intercede with Monsr. Gilbert regarding the payment of the wages due to the servant, Gholam, prisoner, No. 1. Witness then recalled to the recollection of the prisoner, No. 1, the agreement consented to by him formerly, to allow the amount to be deducted from his wages. The prisoners being dissatisfied with this explanation went away grumbling, and in the presence of the witness threatened to enforce their demand by some means or other. Witnesses Nos. 14 and 15 state, that on the day of the contemplated departure of Monsr. Gilbert from the rajbaree the prisoners went to demand the amount due as wages and, on their failing to effect a payment of the same, they declared that they would stop the carriage of the prosecutor on his route and take the money by force from him. Witness, No. 4, the coachman of Mr. Ward, the collector of this district, mentioned that on the day of the occurrence the prisoner, No. 1, came to his master's stables to find his father, prisoner, No. 2, who is a syce in the employ of the collector, and that he mentioned the plan in contemplation of stopping the carriage. Witnesses Nos. 11 and 12, speak to the fact of Monsr. Gilbert having the watch on his person when he started in the carriage, and to his being in the habit of always wearing his watch attached to a chain round his neck.

That the fact of stopping the carriage with the intent to enforce the sum due was premeditated there is no doubt whatever, though the robbery, which ensued in the scuffle between the parties, I do not consider was contemplated; the watch was forced most likely from the pocket of the prosecutor when he

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was seized by the prisoners and in the excitement of the moment was snatched from the chain by the prisoners or by their accomplices.

The witnesses for the defence prove nothing in favor of the prisoner, but rather corroborate the evidence for the prosecution.

I tried the case with the assistance of the law officer whose *futwa* acquits the prisoners of the crime charged. In this verdict I do not agree and I, therefore, refer the case for the orders of Sudder Nizamut Adawlut.

I consider that by the evidence of the prosecutor and his witnesses, and by the statement of the prisoners themselves, the fact of forcibly stopping the carriage on the high road is clearly proved, and though the seizure or theft of the watch is not distinctly established against either of the prisoners, there can be no doubt from the evidence of the witnesses that the prosecutor had it suspended to his neck on his starting on his journey, and that it was missing after he was released from the ill-treatment, and rough handling which he received from the prisoners. I convict the prisoners Nos. 1 and 2 of highway robbery and recommend that they be each imprisoned with labor in irons for three (3) years.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and J. Dunbar.)—We think it clearly established by the evidence on the trial of the two witnesses, Renaudin and Rossi, in support of the statement made by the prosecutor to the magistrate, immediately after the occurrence, that the prosecutor had his valuable watch on, when he was stopped by the prisoners and their companions, and that the watch was forcibly taken from him in the course of the assault then committed. The prisoners may not have been the parties who took the watch, but they and their companions were acting together, in prosecution of a common criminal purpose, and all are responsible for the whole violence inflicted on the prosecutor.

The prosecutor was beaten and injured, though not very seriously.

We concur with the sessions judge in considering the charge proved against the prisoners, and sentence them, under all the circumstances, as recommended by that officer, to imprisonment for three (3) years, each, with labor and irons.

PRESENT :

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

JODH SINGH, SEPOY.

MOORSHEDABAD.

1853.

June 9.

Case of JODH SINGH, SEPOY.

The prisoner was convicted of an attempt to commit an unnatural crime by the sessions judge whose sentence was confirmed in appeal.

CRIME CHARGED.—With assaulting Dewah Singh (a sepoy of the Loodianah regiment) with intent to commit an unnatural crime.

CRIME ESTABLISHED.—Attempt at unnatural crime.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 14th March 1853.

Remarks by the sessions judge.—On the night of the 20th February, the prisoner and one Dewah Singh, sepoy, of the Loodianah seikh regiment were sleeping in a tent, when about 11 P. M., the latter awoke and found the prisoner attempting to commit an unnatural crime. He resisted and began to abuse the prisoner when an uproar ensued. The sepoy on duty hearing the cause reported the circumstances to the havildar of the company, who came and took both the prisoner and Dewah Singh to the subadar, Mohepal Singh, before whom the prisoner admitted that he had on that day given Dewah Singh a rupee for the purpose, and he repeated the same before the subadar Rumjàn Khan while on his rounds, as well as in the presence of the witnesses who were then present. The prisoner denied the charge attributing it to enmity on the part of the subadar, but there was no proof of this, and he named no witnesses in his exculpation.

The assessors who sat with me on the trial considered the prisoner guilty and concurring in the verdict, I sentenced the prisoner as stated in the proper column.

Sentence passed by the lower court.—Four (4) years' imprisonment with labor without irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. Dunbar.)—It is clear from the evidence of Mohepal Singh, and those who were present when the prisoner was first brought before him, that, on being asked by the subadar, how he had dared to attempt such a crime, he made no denial of the charge but endeavoured to excuse himself by asserting that he had given Dewah Singh one rupee during the day, to secure his submission. There is the strongest reason, therefore, to believe the statement of Dewah Singh as to the origin of the altercation which first attracted the notice of the sentry on duty. The conviction is good, and the sentence confirmed.

I observe that the judge in charge of the English department (Mr. Colvin) has, on a review of the monthly statement, called upon the sessions judge to explain* why the addition of irons to the labor was omitted, that the case was assuredly one which required such an addition.

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* Extract para 1, from a letter from the Register of the Nizamut Adawlut to the sessions judge of Moorshedabad, No. 487, dated 2nd May 1853.

The Court having had before them your letter, No. 117, of the 26th ultimo, submitting the statements connected with the sessions of jail delivery held by you in the month of March last, desire me to request, that you will explain why irons were remitted in the sentence passed on the prisoner noted in the margin for the crime established against him.

Jodh Sing, sepoy, No. 1, of statement No. 6.

From the sessions judge of Moorshedabad to the Register of the Nizamut Adawlut, No. 133, dated 17th May 1853.

I have the honor in reply to your letter, No. 487, dated 2nd May 1853, to explain for the information of the Court of Nizamut Adawlut, that in consequence of the light estimation in which the crime is held by the Seikhs, the probability of imprisonment in Bengal being more severe to a Seikh than it would be to any other person, and the crime not being committed, as well as because I could find no regulation or precedent from which it might be gathered that fetters should be imposed in all such cases, I thought it was sufficient punishment to sentence the prisoner to imprisonment with labor only.

From the Register of the Nizamut Adawlut to the judge of Moorshedabad, No. 549, dated 23rd May 1853.

The Court, having had before them your letter, No. 133 of the 17th instant, are of opinion that there should be no exemption from fetters in cases where attempts such as that of which the prisoner, Jodh Sing, sepoy, was convicted, are held to be proved against any party; you are requested to bear this remark in mind in future.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

H. T. RAIKES, ESQ., *Officiating Judge.*

SOLEEM SHEIKH AND GOVERNMENT

versus

MOKEE SHEIKH.

RUNGPORE.

1853.

June 9.

Case of MOKEE SHEIKH.

Prisoner convicted of wilful murder, and sentenced to suffer death; the wounds inflicted on the deceased having terminated in gangrene, of which he died.

CRIME CHARGED.—1st count, wilful murder of Munnoo Mundul, the father of the prosecutor, and 2nd count, wounding the said Munnoo Mundul with intent to kill.

Committing Officer—Mr. S. F. Davis, joint magistrate of Serajgunge.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 25th April 1853.

Remarks by the officiating sessions judge.—The occurrence took place within the jurisdiction of thannah Raigunge in the Serajgunge division, and appears to be a case in which the prisoner owed the deceased some money for which he was continually dunning him, and at last being determined to rid himself of the debt and creditor at once, the prisoner practised on deceased credulity by talking of hidden treasure, and induced the old man to accompany him to a particular spot late one evening, (23rd of February,) and to consent to be blindfolded and while thus helpless, he cut his throat most desperately, severed the windpipe and passage to the stomach by one wound across the throat three-and-a-half inches long, and gave two severe wounds on the back of the neck as if with the intent of cutting off his head, the man was brought in from Serajgunge on the 28th and died of gangrene, induced by the wounds, on the 3rd of March.

Soleem Sheikh, son of the deceased, deposed, that the prisoner and he are neighbours residing in the same village, and that he was indebted to his father rupees 30, and that they were continually quarrelling about the money; the prisoner told his father that a *lota* of rupees was buried in a certain place and that he might have them, but his father refused. On the 13th of Phagoon, the prisoner called his father and told him if he did not go with him he could not get the rupees, and if he would not have all the rupees he might take what were due. That his father then accompanied the prisoner telling him to call his brother, but the prisoner said there was no occasion; they then went away a beegah to the north of the prisoner's house where the prisoner took a *lota* up from beneath the earth, under a *bur*-tree, and said you must be blinded while I say a charm. The devil will then go away if

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not you will suffer. The prisoner took his father's cloth and bound it round his eyes and then cut his throat and wounded him in the back, shoulders and neck, with a knife. That his father taking off the cloth saw the prisoner running away and no one else there. His father then went to the prisoner's house and called out that Mokee had wounded him, and the deponent hearing the noise went and saw Juffoo standing there, and his father told him that Mokee had wounded him and run away; upon hearing this he took his father home and the neighbours, Nos. 2, 3, and 4, came there; after his father got home, he told the deponent the circumstances just detailed; afterwards Mokee of his own accord came to the house and said my uncle, *i. e.*, Munnoo Mundul and I were going together when some dacoits came and wounded him while I ran away.

He then carried his father to the thannah and told the darogah, who took his deposition and sent him into Bograh. The prisoner went with them to the thannah and there, and before the joint magistrate, confessed to having wounded the deponent's father; the wounded man died of his wounds seven days after. The *lota* was found at the place where he was wounded.

Witness No. 1, *Juffoo Pramanick.*—States, that on the night of the occurrence, about eight or nine in the evening, I heard Munnoo Mundul, the wounded man, making a noise to the south of the prisoner's house, I went there, I found him with his throat cut, I asked him how it happened, he replied, that Mokee had taken him to get up some buried rupees and having taken up a *lota* told him he must be blinded while he opened the *lota*, and that when blind-fold he wounded him, and that when he took off the cloth from his eyes he could not see Mokee any where and that coming round to the south of Mokee's house he raised the alarm. Soleem took his father home and the witness went with them; the neighbours, Nos. 2, 3 and 4, came and saw the wounded man and heard the story. The next morning all went to the thannah, when the prosecutor made his complaint and the mohurrir sent the wounded man to Bograh. He describes the wounds. The said Soleem found the *lota* filled with earth. It was moon-light. He knows that the prisoner owed the deceased rupees 30, and that it was a constant source of quarrelling. He knows the *lot a* to be prisoner's property.

Witness No. 2, *Saddee Pramanick.*—On the night of the occurrence heard Soleem saying, that Mokee had wounded his father. He went to the spot and heard deceased tell the story of Mokee wounding him; accompanied them home. Went to the thannah; I heard the prisoner confess of his own accord that he had wounded deceased, &c., &c.

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Witnesses Nos. 3 *and* 4.—Nearly the same as No. 2.

Witnesses Nos. 2, 3 *and* 4, to the mofussil confession. It was free and uncontrolled.

Witnesses Nos. 6 *and* 7, to the sudder confession. It was made of his own accord, &c.

Witness No. 5.—The apothecary Mr. J. Taylor deposes to Munnoo Mundul having died of gangrene in the hospital, three days after admission for severe wounds, which from their nature could not be self-inflicted. The wounds caused the gangrene from which he died.

Confessions.—Before the darogah and joint magistrate, the prisoner confessed to having inflicted the wounds upon the deceased at the instigation of Gooeah Mollah.

Defence.—Before the sessions court the prisoner denies; declares the darogah extorted the confession, and that the burkundauze compelled him to confess before the joint magistrate.

Verdict of the Jury.—The jury, consisting of Degumber Moitur, Govindnath Sirkar and Byeuntnath Moitur, were unanimous in their verdict and found the prisoner guilty on the 2nd count in which I concur. I think under the circumstances of the severe wounding it would have been well, had the joint magistrate of Serajgunge taken the deposition of Munnoo Mundul before two witnesses, to have secured it as a record before the sessions court, in the event of his death, and it is also to be regretted, that the joint magistrate of Bograh did not take his deposition in hospital when gangrene first came on; but still from the evidence before the court, and the confessions of the prisoner himself no doubt remains on my mind of his guilt; the tale he tells of having been instigated to the deed by Goocah Mollah is wholly unsupported, and the nature and extent of the wounds leave little doubt of the intent with which they were inflicted. There does not appear any extenuating circumstances in the prisoner's favour. He deliberately decoyed the old man out in the night and tried to cut his head off, for the purpose of clearing himself of debt, and I would recommend capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes).—The details of this case are given in the officiating sessions judge's letter of reference.

The story told by Munnoo Mundul to Soleem, his son, to Juffoo, a neighbour, who instantly went to the spot on hearing Munnoo's cries, and to several other witnesses on the same night, and the confessions of the prisoner before the police and the magistrate, are all to the same effect. The prisoner accused one Goocah as the person who instigated him to commit the

murder, but no proof of this allegation is adduced. Munnoo was sworn to his statements before the police and the magistrate, but no witnesses were attached to them, a precaution which should, on the occasion of such severe injuries, always be taken. Several witnesses, however, have deposed to the facts recorded in the depositions made by Munnoo as having been related to them by him. The prisoner in the sessions court stated compulsion was made use of to force him to confess, but he cites no witnesses to his defence.

The medical officer deposes, that death ensued on gangrene caused by the wounds inflicted on deceased, one of which he describes as having completely divided the wind-pipe and, as he afterwards discovered, the passage to the stomach.

The sessions judge in concurrence with the jury, finds the prisoner guilty on the 2nd count of the charge, wounding with intent to kill, disallowing the fact sworn to by the medical officer that death ensued on the wounding.

This finding is opposed to the evidence on the record which is given by a competent and most important witness. Evidence to which they have given no weight.

In the last paragraph of his letter the sessions judge is of opinion, that " there are no extenuating circumstances in the " prisoner's favor. He deliberately decoyed the old man out in " the night and tried to cut his head off, for the purpose of " clearing himself of debt"—and he recommends a capital punishment.

Upon the first finding it was competent to the sessions judge in concurrence with the jury, to have awarded punishment himself, on the minor offence of intent to kill, under Clause II., Section II., Regulation XII. 1829. But on the further exposition of his opinion he omits all mention of *death having ensued on the wounding*, and nevertheless, refers the case to the Court with recommendation of capital sentence, as though convicting on the 1st count, wilful murder. We are of opinion that the prisoner must be held responsible for the full consequences of his own acts. The very severe wounds described by the medical officer led, as he has deposed, to the appearance of gangrene which caused death about seven or eight days after the deceased had been attacked. The offence was a deliberate one, the object being to rid himself of his creditor, and there can be no doubt from the evidence on the record that the prisoner was the individual by whose hands the deceased lost his life. For the above reasons we sentence the prisoner to death on conviction of the crime of wilful murder.

PRESENT;
J. DUNBAR, Esq., *Judge.*

DOORBEJEE SING, ON THE PART OF DEGUMBER MITTER AND GOVERNMENT *versus* LUCKHUN GHOSE (No. 5), AND DEGUMBUREE BEWAH (No. 6).

MOORSHEDABAD.

1853.

June 9.

Case of LUKHUN GHOSE and another.

The conviction altered but the sentence confirmed.

CRIME CHARGED.—Prisoner, No. 5, 1st count, theft in the boat hired by Degumber Mitter, master of the prosecutor, from which property to the value of Rs. 1,000 was stolen, and Nos. 5 and 6, 2nd count, having received and possessed a portion of the above property knowing the same to have been acquired by the said theft.

CRIME ESTABLISHED.—Theft in boat.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 29th March 1853.

Remarks by the sessions judge.—On the 6th January 1853, the prosecutor loaded a boat with 17 bales of silk belonging to Degumber Mitter, his master, for transit to Calcutta. At night he anchored his boat at the Berhampore ghaut when one of the silk bales valued rupees 1,000 was stolen. On the following morning search was made by the kutwal of the Berhampore cantonment without avail.

On the 25th January, on the information of one Sadhoo Bewah in another case of theft, the prisoners were apprehended, and on searching their house a portion of the stolen silk was found and proved to belong to Degumber Mitter. There were papers twisted up with the silk containing the names of those who had prepared the silk, and these were identified. The prisoners confessed their guilt at the thannah, in this as well as in the following case, and their confession was proved by the attesting witnesses. The law officer convicted the prisoner of theft and declared them liable to *tazeer*.

Sentence passed by the lower court.—Four (4) years' imprisonment with labor in irons, being a consolidated sentence for two* offences.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —It will be seen from my remarks in case No. 9, against this prisoner, that I see no reason to interfere with the sentence. The conviction, however, must be altered. The evidence is not sufficient to make good the charge of theft. I convict the prisoner on the 2nd count.

* See following case.

PRESENT:

J. DUNBAR, Esq., *Judge.*

ROOKNEE BEWAH AND GOVERNMENT

versus

LUCKHUN GHOSE (No. 7), AND DEGUMBURREE BEWAH (No. 8).

MOORSHEDABAD.

1853.

June 9.

Case of LUCKHUN GHOSE and another.

On conviction of theft in one case, and burglary and theft in another, a consolidated sentence was passed by the sessions judge. The conviction was altered in one case but the sentence confirmed.

CRIME CHARGED.—Prisoner, No. 7, 1st count, burglary attended with violence in the house of the prosecutrix, from which property to the value of rupees 38-15-6 was stolen, and Nos. 7 and 8, 2nd count, having received and possessed a portion of the above property knowing the same to have been acquired by the said burglary.

CRIME ESTABLISHED.—Burglary and theft attended with violence.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 29th March 1853.

Remarks by the sessions judge.—On the night of the 25th January, the prosecutrix was sleeping in her house with Soodah Bewah, when it was burglariously entered into and property stolen to the value of rupees 38-15-6. The prosecutrix was beaten. She recognized the prisoner, Luckhun Ghose; with others, all of whom she named before the kutwal. Her servant, Soodah Bewah, gave information. The same night two witnesses, Bemola Bagdeen and Kristomonee Bagdeen, saw the prisoner Luckhun with others they named, carrying a chest upon their heads. The latter saw them carry it to the prisoner Luckhun's house. The kutwal of the cantonment searched Luckhun's house in which the other prisoner his mother also resided, and found stolen property consisting of jewellery, cloths and brass utensils. The prisoners denied the charge. Luckhun alleging that he was not present when his house was searched, and Degumburee that she was confined to her bed and knew nothing of the property found. The witnesses named by them could state nothing in their favour. The greater portion of the stolen property was proved to belong to the prosecutrix and Hurreepershad Moonshee, with whom she lived, but who was absent at the time, the remainder was not identified nor claimed by the prisoners. The prisoners confessed at the thannah, that the property in question was stolen by others and left in their house, and their confession was proved by the attesting witnesses to have been given voluntarily. The law officer convicted the prisoner, Luckhun, of burglary attended with violence, and Degumburee of knowingly

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receiving and possessing stolen property. I concurred in the finding, and sentenced them as stated in the proper column.

Sentence passed by the lower court.—Four (4) years' imprisonment* with labor and irons, being a consolidated sentence for two offences.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—A consolidated sentence has been passed upon the prisoner in this and another case. With that sentence I see no reason to interfere; but the conviction in the other case should be on the 2nd count of the charge, that is, for receiving and having in possession stolen property knowing it to be such. The evidence does not bring home the theft to the prisoner; but it is sufficient to establish the fact of part of the stolen property having been found in his house. His mother was also properly subjected to punishment, as she herself admitted that she had received stolen goods when her son was absent, and the evidence of the kutwal shows, that she endeavoured to evade discovery by sitting upon them while search was being made.

PRESENT:

J. DUNBAR, Esq., *Judge.*

JOYMONEE BEWA AND GOVERNMENT

versus

SHAHABAZ DAGEE (No. 7), AND WOOTTUN ABDUL (No. 8).

MOORSHEDABAD

1853.

June 10. Case of SHAHABAZ DAGEE and another.

The prisoners were punished by the sessions judge on conviction of attempting to commit burglary. The sentence was confirmed in appeal.

CRIME CHARGED.—Attempt at burglary in the house of the prosecutrix, Joymonee Bewa.

CRIME ESTABLISHED—Attempt at burglary.

Committing Officer—Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 23rd March 1853.

Remarks by the sessions judge.—On the 13th February 1853, at 3 o'clock P. M., the prosecutrix locked up her house and went out, when the prisoners attempted to break into the house. Khoodeeram one of the witnesses, saw them and called out, when Khoodee, another witness, and others saw the prisoners running away. Both the prisoners were taken up by the police, before whom the prisoner, Shahabaz, stated, that he suspected Woottun, his brother, the other prisoner, of having committed the burglary. The prisoners denied the charge, but the witnesses named by them could state nothing in their exculpation. On

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* See preceding case.

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the contrary their evidence added to that of other witnesses established the charge. The prisoner, Shahabaz, was on two former instances, sentenced on conviction of burglary and theft, and Woottun once for the same crime. The law officer convicted the prisoners of the charge with which they stood charged, and declared them liable to *tazeer;* concurring in the finding, I sentenced them as stated in the proper column.

Sentence passed by the lower court.—Four (4) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The plan of the premises submitted by the darogah shows, that there is a great deal of jungle immediately behind the house, so that there is nothing extraordinary in the fact, of these old offenders, attempting to enter it burglariously in the day time, during the absence of the owner. They had fortunately made but little progress in digging a hole in the wall, when they were discovered. The conviction is good, and the court confirm the sentence.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

DHONEERAM KAOT.

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Prisoner acquitted on a charge of culpable homicide, the violence offered to the deceased being so slight that it could scarcely have been fatal, even though the deceased was at the time suffering from disease.

CRIME CHARGED.—Culpable homicide of Beeroo Soroneah.

CRIME ESTABLISHED.—Culpable homicide of Beeroo Soroneah.

Committing Officer—Mr. C. R. Hudson, joint magistrate of Kamroop.

Tried before Major H. Vetch, deputy commissioner of Assam, on the 26th April 1853.

Remarks by the deputy commissioner.—It appears that the prisoner is about thirty-five years old, and that the deceased, aged about forty years, had been in prisoner's service for about a year; latterly, he had been in ill-health and afflicted with asthma and bowel complaint, and that the night before his death he was sitting over a fire, when the prisoner desired him to get up, and on his not doing so, struck and afterwards dragged him to an adjoining out-house, where he expired the following evening.

From the inquest held by the police it appears there were three small bruises on the body; one on the left eye, another on the left side of the breast and the third on the left thigh.

The prisoner in his confession at the thannah stated, that the deceased having neglected to attend to his work was the

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cause of his striking him; while in his confession before the magistrate he alleges his object was to get him away from the fire, for fear he should fall into it.

The only eye-witness to the assault deposes, that the deceased not attending to the prisoner's orders to go from the fire, prisoner gave him a slap on the back, pushed and threw him down on his face, and then dragged him to the adjoining house where he died; this witness further deposes, that the deceased had been suffering from asthma and bowel complaint. Three witnesses depose to the deceased having been ill for some time; that they saw him on the day following the assault of which they had heard; that he was then alive, but they put no question to him; they also depose to the inquest of the police, and to the confession made by the prisoner to his having assaulted the deceased.

Two witnesses depose to the confession to the assault made before the magistrate. There are two witnesses for the defence, who depose to the prisoners having ministered to the deceased on the day on which he died.

The jury returned a verdict of guilty of culpable homicide in which the joint magistrate concurred.

I am of opinion, that the assault and harsh treatment inflicted by the prisoner on the deceased, while suffering from disease, was the immediate cause of his death, although I do not think the prisoner intended or anticipated such a result, nor does the assault appear to have been of a kind to have proved fatal to a person in ordinary health. Taking all circumstances into consideration, I convict the prisoner of culpable homicide, on violent presumption, and sentence him to be imprisoned for one (1) year from the date on which the sentence is explained to him, he being now on bail, and to pay a fine of fifty (50) rupees within 30 days of the date of the promulgation of the sentence, or, in default of payment, to labor until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The deceased is said to have been ill for some time, suffering from asthma and diarrhœa, and the witnesses describe the assault as trifling and such as could not have been attended with fatal consequences to a person in health. There was no medical inquest on the body; but the darogah reported there were three slight bruises observable, one under the left eye, another on the left side of the breast and a third on the left thigh; these were probably caused by dragging the deceased on his left side to the out-house which however was only a few *hauts* distant from the fire where he had been sitting. It is not probable that injuries of so slight a nature could have caused the death of the deceased, even weak as he was. I therefore see no sufficient grounds for inferring that death was

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necessarily caused by this treatment; it is in my opinion more reasonably explained by imputing it to the disease the deceased was suffering under, and in the absence of any medical opinion, it would not be safe to say that death ensued from any other cause. I therefore acquit the prisoner of culpable homicide and direct his release.

PRESENT:

SIR R. BARLOW, BART., *Judge*

AND

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT

versus

GANDIAH KAHALIN.

HAZAREE-BAGH.

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June 10. Case of GANDIAH KAHALIN.

A woman convicted of the wilful murder of her husband sentenced to imprisonment for life, she having been bound to a post by her husband, from which having released herself she attacked and killed him.

CRIME CHARGED.—Wilful murder of her husband, Bhoolia Kahal.

Committing Officer—Captain G. N. Oakes, first class assistant agent, Governor General, at Manbhoom.

Tried before Major J. Hannyngton, deputy commissioner Chota Nagpore, on the 19th April 1853.

Remarks by the deputy commissioner.—The Government is prosecutor in this case. The prisoner, Musst. Gandiah Kahalin, is charged with having wilfully murdered her husband, Bhoolia Kahal.

The prisoner pleads not guilty.

Witness, No. 1, *Auhalad Kahal.*—This witness is a boy appearing to be about five years old. He is quite incapable of understanding the nature of an oath. Therefore he was not examined.

Witness, No. 2, *Ram Kahal, witness, No.* 3, *Maubodh and witness, No.* 4, *Juggurnath.*—These witnesses prove the record of the inquest. The body of deceased, when examined, was half-eaten by wild animals, and the head was wanting.

The witness, No. 4—States, that he used frequently to visit the house of the deceased, and the prisoner used to commit thefts, for which the deceased beat her.

Witness, No. 5, *Urjoon and witness No.* 6, *Lukheeram.*—These witnesses prove the voluntary confession of the prisoner made before the police. It was taken at midnight. The witness, No. 5, states, that prior to the confession, the prisoner had not mentioned the murder of the deceased.

The substance of this confession is, that her husband, Bhooliah, used to starve and ill-treat her, and that on the day before yesterday (27th December 1852,) he had beaten her, bound her

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arms behind her back, tied her to a post in the yard, and there had left her, while he went to sleep in the house. That towards the end of the night she had loosed her bonds with her teeth, and going into the house found her husband sleeping on a cot. It was bright moonlight, and prisoner taking the axe, which has been produced by the village watchman, struck deceased therewith two blows on the neck and severed it. She then put the body in a cow-shed, where it remained till the evening of the following day, when she first carried the head to a pool behind the house and then returning, dragged the body to the place where it was found.

Witness, No. 7, Shaikh Bundhoo, and witness, No. 8, Sheikh Buddiroodee.—These witnesses prove the voluntary confession of the prisoner before the principal assistant. The substance of this confession is, that the deceased had made an alliance (sanga) with her above a year ago, and about April last, she bore him a daughter. After this the deceased used to say, he would keep her no longer; but she was unwilling to leave him and so to bring disgrace on her own family. He then refused her meat and clothes, and sometimes beat her. She used to beg and bring home food for herself, which food he would sometimes defile and throw away. At night he used to bind her with a rope; and sometimes he left her bound in the water, or in the jungle. In September or October last, he took up with one Sohagi Kahalin, daughter of Baijnath, she used to come and sleep with him; one night, in December last, he bound prisoner to a post and was sleeping with Sohage; prisoner released herself with her teeth and going into the house took an axe and therewith struck deceased a blow on the neck cutting it half through. Sohagi * then got up and fled. Prisoner struck deceased another blow on the neck and severed it. The head she then put in the pool, and having told all this to Gohi Kahal, the uncle of the deceased, she and he removed and threw aside the body; next day she made confession to the villagers.

This confession was made on the 4th January, and was again acknowledged by the prisoner, on the 29th January.

Witness, No. 9, Bundoo Chowkeedar—States, that one forenoon, in December last, he noticed kites and vultures flying about, and was thus led to the discovery of a body lying in the bed of a rivulet. Whereupon he brought Anoo Bahoo and others to the place, and Gohiram Kahal recognized the body. Traces were observed of the body having been dragged along, and were followed up to the cow-house of the deceased, where some spots of blood were found, smeared over with sand. The

* I directed search to be made for this person, but she could not be found.

prisoner being questioned gave uncertain answers, but, finally confessed that she had murdered the deceased, because he ill-treated her. The deceased and the prisoner had frequent quarrels. Witness does not know of any female named Sohagi. The deceased used to beat the prisoner. Witness very urgently persuaded the prisoner to confess, and told her, it were better that she should confess. Witness goes his rounds as a watchman regularly. The deceased was half-witted like, and the prisoner always answered the watchman's call. Witness heard no sound of crying that night.

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Witness, No. 10, *Gohi Kahal*—States, that the prisoner is his brother's son's wife. About noon, on the 15th Poos, at the summons of the farmer of the village, he went with Muthoor Kahal and others to see the body which he then recognized as that of Bhoolia Kahal. The prisoner being questioned about him, said sometimes that he had gone to the jungle, sometimes to her father's house, but on witness's telling her to speak the truth, she confessed having murdered the deceased, because he had ill-used her. Afterwards she showed where she had put the head of deceased, but on diligent search it could not be found. The place where the body lay was about 160 yards from the house of the deceased; prisoner said that she had dragged it there. Witness did not assist her. Prisoner has lived with deceased for four years past. The boy, Auhalad, is her son by him. The deceased had intimacy with one Sohagi, daughter of Dasroth; she died five years ago. There is no other person named Sohagi that witness knows of.

Witness, No. 11, *Baijoo Rajwar.*—Corroborates the evidence respecting the condition of the body, and the confession made to the villagers by the prisoner.

Witness, No. 12, *Mothoor Kahal.* To the same effect.

The prisoner in her defence states, that one day at dawn, Mothoor Kahal came to the threshing floor where she with her infant child was watching; and the boy, Auhalad, who was lying on a separate cot, in reply to him said. "My father is sleeping in the house;" Mothoor then went into the house and murdered her husband with this very axe. The boy exclaimed "Oh mother he has killed my father." In the morning she sent Myaram Kahal to inform her father and brother, and she herself told Anoo Thakoor of it. She does not remember what she said before the police or before the principal assistant. Mothoor left the body in the house and Myaram and his son, Arjun, dragged it away. No one, but Muthoor Kahal knows of this.

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The jury, whose names and occupations are entered below,* find the prisoner not guilty, because there is no witness to the fact, and the unsupported confession of the prisoner is not sufficient proof. The weapon produced is not such as would sever a man's neck at two blows.

In this verdict, I do not concur. The confessions of the prisoner, though differing in some particulars, are consistent. That her husband had cruelly treated her; that he had bound her to a post; that she got loose and instantly killed him while he slept, are the essential facts stated in both confessions. That her husband did habitually ill-treat her, is shown in evidence. The witness, No. 4, says, that the deceased used to beat her, because she stole. She says he beat her, and defiled the food she had obtained by begging. The witness, No. 9, says, the pair had frequent quarrels, and that deceased was "half-witted like." As to other particulars of the confesssion, they are supported by the facts; she says she dragged the body after dusk from the cow-house to the place where it was found, the traces of the dragging were visible; she says that she severed the head from the body; the body when found was headless. Had she removed the body in the morning, it would probably have been found otherwise uninjured; she removed it at night, and the wild animals had half-eaten it before the discovery. There is certainly a dfficulty in supposing that the rude instrument used, though nearly two pounds in weight, could, if used even by a vigorous arm, sever a man's neck at two blows; but it is not probable that the prisoner in her excitement kept any reckoning of the blows given. I attach no credit to the prisoner's defence. Believing that the prisoner acted under considerable provocation, I consider that a sentence of imprisonment for life will suffice in this case, and I therefore recommend that the prisoner be so sentenced.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes.)—The offence of which the prisoner is proved guilty, would involve a capital sentence, but for the circumstances which she puts forward, which afford grounds for mitigation of punishment. She released herself from the bands with which she had been fastened to a post outside by the deceased, seized the *koralee* which was at hand, and inflicted the wounds which caused instantaneons death. We see no reason to disbelieve the prisoner's confessions, and therefore convict her of murder, and sentence her, as recommended by the deputy commissioner, to imprisonment for life, with labor suited to her sex, in the zillah jail.

* Koylasschunder Chaterjea, Mokhtar; Radhanath Sircar, Mokhtar, and Nilkumul Chowdry, Mokhtar.

PRESENT:

SIR R. BARLOW, BART., *Judge*,

AND

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT AND GOLAM AHMED CHOWDREE

versus

RAJKISHORE DASS (No. 10), AND GOOROOPERSHAD DASS (No. 11).

CRIME CHARGED.—Cheating.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

BACKERGUNGE.

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Case of RAJKISHORE DASS and another.

Two prisoners convicted of cheating, in having pawned some gilt ornaments as gold ones, and sentenced to six months' imprisonment.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 18th May 1853.

Remarks by the sessions judge.—Golam Ahmed Chowdree, presented a petition to the magistrate, on the 17th February last, charging the prisoners with having pawned to him, about two months previously, some guilt ornaments as gold. After taking the deposition of the prosecutor and his witnesses, the magistrate issued his warrant for the apprehension of the prisoners, and committed them to the sessions on a charge of obtaining money under false pretences, which I directed him to alter to cheating.

Rajkishore Dass denied pawning any articles with the prosecutor, and pleaded that the accusation was a false one. The reason he assigned for it was this. That he had agreed to purchase from the prosecutor five hundred maunds of rice at the rate of 119 rupees per one hundred maunds, but that price of rice falling in the market, he repented his bargain and never went near the prosecutor again. He also named witnesses to prove that he was at Burrisaul on the day the transaction was said to have taken place.

Gooroopershad Dass also denied the transaction; he made no defence, but pleaded an *alibi*.

Kallachand Chuckerbutty was also committed as a party concerned. He admitted that he went at the request of the two other prisoners, and stood security for them to the prosecutor. As however he could not be presumed to have known that the articles were gilt, and his share in the transaction amounted to no more than making himself responsible for the appearance of the other prisoners, I agreed that there was nothing to sustain his conviction, and he has been released accordingly.

Two witnesses deposed to the pawning of the articles by the two prisoners on the security of the third; and two other witnesses proved that the pawned things were brass gilt.

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The witnesses to the *alibi* of both prisoners failed to establish the defence, and the witnesses who were sent for by my order, to prove the alleged bargain between the prisoner, No. 10, and the prosecutor, could only say that they heard of it from the prisoner himself.

The law officer considers the case not proved, and acquits the prisoners.

From this, I dissent. The prosecutor is a man of respectability, incapable of being base enough to prefer a false charge on his oath. Had he even descended to such meanness, as to invent a story to convict the prisoners, he would have got abundant evidence to prove it. The very circumstance of the scantiness of the evidence gives credibility to the charge. Transactions of this sort need not to be witnessed. The universal custom of giving only half the value of the thing at the time of pawn, explains why witnesses are not needed. It matters not to the person giving a loan on a pawn, whether the pawner comes to redeem it or not; his security is in the possession of an article of greater value than the sum paid for it. The presence, therefore, of only two persons, besides the parties themselves, is not strange, nor is their evidence to be rejected because of a slight discrepancy connected with the receipt which is said to have been given by the prisoner at the time. The transaction they witnessed was one not requiring witneses. They saw it, as it were, casually, and cannot be expected to have a distinct knowledge of every minute particular connected with the transaction. That the prisoners pawned the articles in question is fully established by their evidence, and there is, in my opinion, no reasonable ground to reject it. The prosecutor himself, as I observed, is a man of respectability and his oath, if it stood alone, is entitled to great consideration.

Looking at the defence of Rajkishore, it utterly fails to prove his innocence. Had any such bargain, as that alleged by him, been made between him and the prosecutor, it was susceptible of the best proof. Such transactions are not entered into except on paper, and witnesses on both sides are present to give security to the parties, in case of the failure of either to fulfil his engagement.

The defence having so entirely failed, and the evidence for the prosecution being as good as, under the circumstances, could reasonably be looked for, I hold that the prisoners, Rajkishore Dass and Gooroopershad Dass, have been proved guilty of the charge of cheating, and I would sentence them to six (6) months' imprisonment with labor, commutable to a fine of twenty-five (25) rupees each.

I think that the magistrate was competent to have dealt with the case himself.

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Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr. H. T. Raikes).—We entirely concur in the remarks of the sessions judge on this trial. We see no reason for doubting the witnesses for the prosecution; while at the same time those cited for the defence fail altogether in establishing what has been urged by the prisoners, either as to the contract regarding the sale of rice, or the *alibis* set up by the prisoners. The sentence recommended by the sessions judge of six (6) months' imprisonment, with labor commutable to a fine of twenty-five (25) rupees, is, in our opinion, sufficient measure of punishment, the fine to be paid within fifteen (15) days, in default with labor without irons.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

versus

AJAIEB ROONEAR.

SHAHABAD.

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June 10. Case of AJAIEB ROONEAR. Prisoner charged with wilful murder. Case remanded for further inquiry regarding the prisoner's state of mind.

CRIME CHARGED.—Wilful murder of Musst. Phooljhureea.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 13th May 1853.

The following letter, No. 97, dated 25th May 1853, was submitted by Mr. W. Tayler, sessions judge of Shahabad.

The prisoner was tried in October 1848, for the murder of a girl, the daughter of the woman who has now fallen by his hand.

In the trial referred to, the law officer found him guilty, but the judge considered the evidence insufficient, and he was acquitted.

In the present case the evidence leaves no doubt of the prisoner's guilt.

The deceased, whose deposition was taken in the hospital, distinctly charged him with the deed, alleging, that he struck her two blows with a *kodal* on the head, and in the mouth, while she was grinding grain.

Witness, No. 1.—Deposes to having been grinding *suttoo* with the deceased, when the prisoner came out and struck her with the *kodal*,—no words having previously passed between them.

This witness is the wife of the prisoner, but she has been separated from him for several years, ever since he killed the

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poor girl before alluded to. I had some hesitation in admitting this woman's evidence against her husband, but as I find that the Sudder Court has received such testimony, I did not think it right to allow so atrocious a criminal any unnecessary chance of escape.

She took hold of the prisoner as he was attempting to escape, when witness No. 2, attracted by her cries, ran up and seized him with the *kodal* in his hand.

Witness, No. 10.—Deposes to seeing the prisoner running away.

The civil surgeon's testimony proves the existence of the two wounds on the head and lip, and shows that death was caused by fracture of the skull.

On the former trial and on the present, an idea was mooted, arising from the statement of the chowkeedar who first reported the murder, of that the prisoner is of unsound mind. But there appears to be no ground whatever for such belief.

Dr. Whittall, on the former trial, and Doctor Allen, on the present, both state that he is sane.

The prisoner denies the charge, stating merely that his house was robbed and that he does not know how the deceased was killed; he calls no evidence for his defence. The *futwa* finds him guilty of murder, but holds kissas barred, because the evidence of one female witness is not sufficient; and because the deceased survived several days after the injury received by the blows.

I concur in the verdict of wilful murder.

The prisoner is in his sound mind, unless ferocity, more than brutal, be deemed insanity.

The woman whom he has murdered was prosecutrix on the former trial, and doubtless there were bitter feelings between them.

No immediate provocation is established, the instrument used is a heavy iron hoe, a blow of which on the head heavily struck must be inevitably fatal. The blow was twice repeated, once on the poor woman's face and again on her head.

As a capital sentence is barred by the Mahomedan law, I recommend that the prisoner he transported for life.

Resolution of the Nizamut Adawlut, No. 656, *dated* 10*th June* 1853.—(Present: Sir R. Barlow, Bart.)—The Court, having perused the proceedings connected with the case of Ajaieb Roonear, observe, that the prisoner is charged with the wilful murder of Phooljhureea, whose deposition was taken by the police on the 9th April last, the day on which she was assaulted; it was also taken by the magistrate on the 15th idem, and she died on the 21st idem of the effects of the blow, which fractured

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her skull. In both depositions she distinctly charges the prisoner with the deed, adding that the prisoner killed her daughter some 6 years before. The prisoner was acquitted for want of proof.

The witness, Berinjea, who was grinding gram with Phooljhureea, deposes to the fact of seizing the prisoner, her husband, from whom she had lived separate since the death of Bissessuree, the daughter of the deceased, on seeing him inflict the blows on the face and head of the deceased, which are described by Dr. Allen in his deposition, one of which fractured the skull, and in his opinion was clearly the cause of death.

Seeta, chowkeedar, the next witness, on hearing the cries went to the assistance of the last witness, when he saw the prisoner making off with the *koodalee* and apprehended him. The instrument was before the sessions court, and was sworn to by the witnesses. The weight and description of it should have been entered in the calendar. This omission does not, however, invalidate the evidence to the fact that it was used and caused death.

Rogobeer, witness, deposes to having gone to the spot on hearing the cries of Berinjea, and to seeing the prisoner running off to the south of the village, when Seeta, chowkeedar, seized him.

Three witnesses before the magistrate, not examined by the sessions judge, depose, that the prisoner labors occasionally under abberration of mind.

The prisoner's defence is, in the foujdaree court, that Roopa, Luchmun and Turbhoobun stole his property and murdered the deceased, Phooljhureea. In the sessions court he pleaded that Luchmun, Beecha, and the deceased, had stolen it, adding he did not know who murdered deceased.

Ten individuals were examined, not on oath, by the police. None of them speak to the state of the prisoner's mind at the time he committed the assault, which caused death.

One says that *he heard* prisoner killed the deceased, when mad, and that he had killed her daughter previously when in the same insane state.

Another, I *heard* that prisoner killed deceased when insane. He is *occasionally* insane,

A third, I *heard* that prisoner killed deceased when he was insane. He often *at times* is insane.

A fourth, *heard* the prisoner had done the deed when insane.

The fifth and sixth persons examined stated as the last.

The seventh *heard* as the last, adding he occasionally was not of sound mind.

The eighth stated as the fourth, fifth and sixth.

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The ninth, *heard* he committed the deed when out of his mind saying, the prisoner wandered about.

The tenth, *heard* the deed was committed by prisoner when insane.

These, and any other witnesses, should have been examined, on oath, to ascertain what was the state of the prisoner's mind *at the time he committed the assault*, which, it is clear, was the cause of death.

The chowkeedar, informant at the thannah, to whom the sessions judge alludes, says, the prisoner for some time has been of unsound mind.

Hearsay evidence in general terms on a point so material to the issue of the case, is inadmissible as proof, and is most unsatisfactory data on which to ground a sentence.

The evidence of the medical officer, and the sessions judge and law officer's opinions, as to the state of the prisoner's mind, do not bear upon the point at that stage of the trial, when the most accurate information and clear proof as to the prisoner's sanity is most required.

A doubt as to his sanity was raised on his former commitment for the murder of the deceased's daughter, that case was decided on its merit, and the prisoner was released, irrespective of the question of his sanity or otherwise. In the present trial that question is again raised, but has not been thoroughly investigated, for which purpose the case must be returned to the sessions judge, who will enlarge the sphere of his inquiry, so as to embrace proof of the prisoner's state of mind before and at the time, as well as after the commission of the offence with which he is charged.

The court further observe, that the sessions judge recommends that the prisoner be transported for life, as a capital sentence is barred by the Mahomedan law.

The *futwa* convicts the prisoner of wilful murder, but bars capital sentence on the ground of insufficiency of the evidence of one female witness, and because death ensued some days afterwards.

The sessions judge concurs in the verdict of wilful murder, and allows to the Mahomedan law, as expounded, a degree of weight which, by the Regulations, is distinctly not recognized.

Clause 3, Section II., Regulation LIII. of 1803, enacts:—"If the crime for which the prisoner is declared liable to discretionary punishment, &c., &c., be such as would have subjected the prisoner to the specific penalty of hud or kissas provided by the Mahomedan law; if he had been convicted on full legal evidence, and the *futwa* of the law officer shall declare him liable to discretionary punishment, in consequence of the evidence not being such as the Mahomedan law requires for a

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sentence of hud or kissas, &c., &c., the judge before whom the trial may be held, provided he concur in the conviction of the prisoner, shall require the law officer to disclose by a second *futwa* to what specific punishment (of hud or kissas) the prisoner would have been liable under the Mahomedan law, if he had been convicted *by full legal evidence,* and shall proceed, &c.; and if the case be referrable for the sentence of the Nizamut Adawlut, shall transmit the trial with his opinion to that court."

The second *futwa* was not called for; the law above-quoted, appears to have been altogether over-looked by the sessions judge: hence the effect which has been given in his decision to the Mahomedan law, while it is the object of the regulations to supersede the nice distinctions it draws and enjoins; whereby the degree of proof against the party accused, rather than the degree, and guilt and criminality of the act established against the prisoner, is made the rule upon which to award a judicial sentence.

The circumstance that death ensued some days after the infliction of the wounds, is a matter of no consequence in the face of Dr. Allen's deposition, that death was caused by the fracture of the skull. The prisoner must be held responsible for the result of his violent and illegal assault.

Under the very strong terms in which both the law officer and the sessions judge have recorded their opinions in this trial, the question of sanity or otherwise, of the prisoner is of most essential importance as to the final judgment to be passed on him. The sessions judge will, with reference to these remarks, summon the parties examined before the police, and any others he may himself deem necessary, to determine the state of the prisoner's mind at the time he committed the offence, or as near it as possible. He will call upon him for a new defence, and upon the law officer for a fresh *futwa,* and dispose of the trial according to the views he may entertain on consideration of the record when completed.

N. B.—The prisoner was, on the 19th August 1853, acquitted by the sessions judge on the ground of insanity.

PRESENT:

SIR R. BARLOW, BART., AND J. DUNBAR, ESQ., } *Judges.*

GOVERNMENT AND THAKOORDOSS MUNDUL *versus* ROMONEEY DOSSEE.

24-PERGUNNAHS.

1853.

June 11. Case of ROMONEEY DOSSEE. Prisoner convicted of murdering a child for the sake of its ornaments, sentenced capitally.

CRIME CHARGED.—1st count, wilful murder of Nistareeney, a girl of six years of age, daughter of the prosecutor, for the sake of her ornaments, and 2nd count, having in her possession, a silver necklace, value Company's Rupees 4½, knowing it to have been acquired by the murder of Nistareeney.

Committing Officer—Mr. E. Jenkins, magistrate of Howrah.

Tried before Mr. W. J. H. Money, sessions judge of 24-Pergunnahs, on the 23rd April 1853.

Remarks by the sessions judge.—The prosecutor, father of the deceased, deposed to the fact of his daughter, a child of six years of age, being in the habit of going out for play: that on the 9th Phagoon last, (Saturday,) in consequence of her not having returned at the close of the day; he searched for her unsuccessfully at home and other directions including the prisoner's house: subsequently about 7 or 8 P. M., that night, (which was moon-light) on again proceeding to the prisoner's house on his search, he discovered his daughter's corpse about four *hauts* off concealed under a cocoanut tree; his cries brought *witness No.* 11, *Harro, chowkeedar, witness No.* 1, *Neelcomul, burkundauze, witness No.* 9, *Chintamonee Burnick* and *witness No.* 10, *Surroop Mundle,* who were assisting him in his search to the spot; to the first of whom the prisoner who was standing at her door, on being questioned about the blood on her person, admitted having killed the child with a bamboo and taken her necklace, both of which she produced: the prosecutor further deposed to the necklace produced being worn by his child, and it was in consequence of her being in the habit of playing at the house of the prisoner, who was a questionable character, that his suspicions were roused and induced him to go a second time to the prisoner, who on the first occasion had rather angrily denied having seen the child.

The prisoner denied the charges, on which she was arraigned in this court; in the mofussil she admitted having killed the deceased with a bamboo for the sake of her necklace, and concealing the corpse where it was discovered; before the magistrate she made the same admission, excepting that she denied having killed the child for the sake of her necklace.

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Witness, No. 1, *Neelcomul, Burkundauze, witness, No.* 10, *Surroop Mundle, witness, No.* 11, *Harro, chowkeedar* and *witness, No.* 9, *Chintamonee Burnick* confirmed the prosecutor's statement as to the discovery of the corpse, and the production of the necklace, which they recognized being worn by the deceased; the three first witnesses deposing also to the appearance of blood on the prisoner's person, and her admitting having killed the child with a bamboo which she produced,

The witnesses to the *sooruthal* deposed to a very severe wound on the head over the right ear which exposed the brain, blood about the mouth, and marks of beating on the back.

The surgeon deposed, that there was a fracture of the skull, at the back of the right ear through which the brain protruded, and that death must have been immediate; that the wound must have been inflicted with a heavy blunt instrument used with force, such as the bamboo produced in court, which weighed very nearly a seer,

The prisoner at the last accused her husband of placing the necklace in the house, and bringing her into trouble, in consequence of her intrigue with another person; the husband, however, was at first declared by her to have been absent from home at the time she committed the fatal act.

From the evidence adduced, as well as the prisoner's confession, there can be no doubt of her guilt, or of the motive which actuated her; in concurrence, therefore, with the *futwa* of the law officer, I convict her of wilful murder and seeing no extenuating circumstances recommend a capital punishment.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow Bart., and Mr. J. Dunbar).

SIR R. BARLOW.—There is the fullest proof on the record. She confessed in the mofussil and before the magistrate, and also produced the *hunslee* which the deceased child used to wear. The child was in the habit of going to the prisoner's house to play, and was murdered with a club of some ¾ seer in weight by a blow on the head near the ear; the skull was broken, and the brain protruded. The confessions are duly verified, and proof is given of the production of the property by the prisoner from an earthen pot, and its recognition by the witnesses in the case. The prisoner at the sessions trial pleads "not guilty," and says she was tortured by the police, but has no witnesses in her defence. I convict the prisoner of wilful murder, and would sentence her capitally.

MR. J, DUNBAR.—I concur in the conviction, and in the sentence proposed.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

OKUL FUTTOOA.

PATNA.

1853.

June 11.

Case of OKUL FUTTOOA.

Prisoner convicted of administering intoxicating drugs with intent to rob and sentenced to seven years' imprisonment.

CRIME CHARGED.—Administering poisonous or intoxicating drugs mixed with dal, with intent to rob, to Boodhun Kahar, Bhyro Dosad and Musst. Joy Koocree Dosadin, at bazar Boodh Gyah, in the district of Behar, on the 7th of January 1853, corresponding with 12th of Poos 1260 F. S.

Committing Officer—Captain H. M. Nation, Assistant General Superintendent for the suppression of thuggee and joint magistrate of Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 28th April 1853.

Remarks by the sessions judge.—The reason of this reference is my differing in opinion with the law officer, who convicts the prisoner of only administering intoxicating drugs, while I am of opinion that the drug from its effects must have been of a poisonous nature.

The circumstances are these:—The evidence of the only one of the three prosecutors who was present at the trial is that the prisoner, who was not before known to him, took him and two other travellers to the place where he had put up at Boodh Gyah, and purchased and cooked dal and rice for the whole party to whom he distributed food of both kinds, himself parttaking only of rice, and giving a false excuse for not eating dal, *viz.*, that the vessel containing it was broken. As soon as they had partaken of the food which tasted bitter, all except the prisoner felt, as the prosecutor expressed it, intoxicated, and very soon after became insensible. Towards morning prosecutor coming a little to his senses perceived the prisoner trying to take some money from his waist-cloth and on his making, a noise, a chowkeedar came up and took the prisoner into custody.

This evidence is coroborated by that of the banyah who sold the articles of food to the prisoner saw him cook and distribute it to the others, taking only rice himself, and saw the travellers become insensible; the other witnesses being burkunduazes and chowkeedars, proved the information being given to them of the travellers having been drugged, the state of unconsciousness in which they were found, the disappearance of the prisoner at the time, and his being apprehended subsequently in the act of carrying off several metal cooking-pots and utensils belonging to the travellers about three in the morning.

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The prisoner called no witnesses and merely denied the act laid to his charge.

Deeming the prisoner guilty of administering some poisonous drug with intent to steal, and considering the necessity of putting down the crime, which is one of frequent occurrence, by severe examples, I would recommend that he be sentenced by the court to be imprisoned for fourteen (14) years, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Mr. H. T. Raikes).—The evidence is quite sufficient to convict the prisoner, of having mixed some deleterious substance with the food he prepared and gave to Bhyroo, Joykooeree and Boodhun, and there can be no doubt his object was to rob them of their property. It is not, however, known what drug was used, and it appears that the sufferers were treated in the hospital and discharged without any permanent bad effects following. The symptoms were those of stupefaction, such as might have proceeded from the influence of intoxicating drugs, and all such drugs may prove fatal if taken in sufficient quantity ; but I see no reason for supposing that they must have been of a poisonous nature. I convict the prisoner, Okul Futtooa, of administering intoxicating drugs with intent to rob, and sentence him to imprisonment with labor and irons for seven (7) years.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND ESHURCHUNDER GHOSE

versus

TRIAL No. 4.—JONABOODDEEN (No. 5), KUDDUROODEEN (No. 6), USHKUR KHAN (No. 7), KULLIM* FUKKIR (No. 8), NEZAMOODEEN (No. 9), USHRUF (No. 10), BABUR ULLI (No. 11), AND KISHTO KISHORE DAS, (No. 12), TRIAL No. 5. UBBASS AKHOOND (No. 1).

BACKERGUNGE.

1853.

June 11.

Case of JONABOODDEEN and others.

The prisoners, who were charged with riot attended with culpable homicide and wounding, were convicted and sentenced to punishment by the sessions judge, whose order was confirmed in appeal with respect to all save one, against whom the evidence was deemed insufficient.

CRIME CHARGED.—Trials Nos. 4 and 5, riot attended with the culpable homicide of Dhunayi Kazee, and the wounding of Roushun and Radhanath. Trial No. 5, riot attended with the culpable homicide of Dhunayi Kazee and the wounding of Radhanath and Roushun.

CRIME ESTABLISHED.—Trials Nos. 4 and 5, riot attended with culpable homicide and wounding.

Committing Officer—Mr. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, officiating sessions judge of Backergunge, on the 19th January 1853.

Remarks by the officiating sessions judge.—Trial No. 4.—The original case, connected with the charge upon which the prisoners are now committed, was tried by the sessions judge in the month of July 1852.

The judge's conviction in regard to nearly the whole of the prisoners was confirmed on appeal to the Nizamut. *Vide* the proceedings † of the Court, under date the 14th September 1852.

The prisoners, now made over, were named in the original trial and have been identified by many witnesses re-examined in their presence.

The nature of the defence of all the prisoners is the same, *viz.*: an *alibi*, but the witnesses named by them, respectively, do not prove that they were not in the riot. In conformity therefore with the verdict of the jury, I convicted the prisoners of riot attended with culpable homicide, and sentenced them each to six years' imprisonment with labor.

At the same time, I must observe, that I never convicted any prisoners with such extreme reluctance as I have done the prisoners at the bar. They are all ryots and depend upon the hord, but peaceful, labor in the field for their subsistence. That they have taken up arms in furtherance of a scheme of

* Acquitted by the S. Judge. † See printed Reports, page 383.

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the landlord, the success of which would not profit them in the least, is a fact which presents no parallel on any other nation. Where no motives exist to account for such persons taking part in the quarrel of their landlord, it may be imagined how great is the power which is exercised, in this country, over the peasantry. But more lamentable than any thing is the spectacle which this case presents; that the wretch who exercised this powerful and wicked influence over so many of his tenants, and without whose tyrannical order, and the dreaded consequences of refusing it, it is absurd to suppose, that the case would otherwise have occurred, has escaped unscathed and uninjured. Besides setting the law at open defiance in the unwarrantable endeavor to seize upon another man's lands, he has been the agent which has sent to jail more than a score of his miserable peasantry, and the same act will no doubt bring to beggary nine-tenths of their innocent families. The man who has done this, has further done so in numerous other prior cases with perfect impunity, and unless the law is made sensibly to touch such characters, the name of Neelkanth Roy will yet become still more notorious than it now is, as the greatest and most unscrupulous *dungabaz* in this district.

Trial No. 5.—This prisoner is charged with the same riot as the prisoners made over in calendar No. 4.

His defence is that he is not the person originally accused, and that he was in Burrisaul on the date of occurrence of the riot. His witnesses, however, failed to establish that he was in Burrisaul, on that particular date, and as he was named from the beginning and has been identified at the trial, I have no doubt of his guilt. He was accordingly convicted of riot attended with culpable homicide in conformity with the verdict of the jury.

Sentence passed by the lower court.—Trial No. 4. To be imprisoned for six (6) years each with labor in irons. Trial No. 5.—To six 6 years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—Mr. Norris appeared for the prisoners, in this and the following case, (Nos. 4 and 5,) and Baboo Sumboonath Pundit for the Government.

Mr. Norris said he did not intend to dispute the fact that a riot had taken place; but he thought, that the prisoners should have the benefit of the utter improbability of their having taken part in a serious breach of the peace, owing its origin, as he contended, to disputes between parties with whom they had no concern. Their landlord, Neelkanth Roy, he observed had been acquitted by this court on a charge of instigating the riot. He commented also at considerable length on the evidence, pointing out variations and discrepancies.

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On referring to the former proceedings, I find that, although there was strong presumption against Neelkanth Roy, Mr. Mytton did not consider the proof sufficient for conviction. There is nothing on the record, however, to render it, in any degree doubtful, that the body of rioters was mainly composed of his adherents and dependents; and the evidence adduced establishes the fact, that the whole of the prisoners, whose case is now before the court, were present and took part in the riot, with exception of Ashruf. He was sworn to by seven witnesses at the trial, but I find, that five of these did not mention him in their original depositions before the darogah; of the remaining two, the evidence of one Sumeeroodeen was declared by Mr. Mytton altogether unworthy of credit; so that there remains but the evidence of one man against him; deeming this insufficient, I acquit him, and direct his release. The sentence of the sessions judge, in respect to the others, is confirmed.

PRESENT:

H. T. RAIKES, ESQ., *Officiating Judge.*

MUSST. LOLLMONEE BEWA AND GOVERNMENT

versus

GOPAL BAGDEE.

MOORSHEDABAD.

1853.

June 11.
Case of GOPAL BAGDEE.
Conviction of an old offender in a case of burglary and theft confirmed in appeal.

CRIME CHARGED.—1st count, with burglary in the house of the prosecutrix, Lollmonee Bewa, from which property to the value of rupees 5, annas 14, pies 6, was stolen, and 2nd count, with receiving and possessing property knowing the same to have been acquired by the said burglary.

CRIME ESTABLISHED.—Burglary and theft.

Committing Officer —Mr. C. F. Carnac, magistrate of Moorshedabad.

Tried before Mr. D. I. Money, sessions judge of Moorshedabad, on the 16th March 1853.

Remarks by the sessions judge.—On the 27th January 1853, at 10 or 11 A. M., the prosecutrix locked up her house and went to bathe in the Ganges, when a thief entered in by forcing the lock and stole therefrom property to the value of rupees 5-14-6. She was informed of the circumstance by two of her neighbours. The prisoner was taken up while coming out of the house with the stolen property, and a portion of the stolen property was found in the house of one Gunga Bewa, which was proved to belong to the prosecutrix. The prisoner stated before the police and the magistrate, that one Deenoo Nundee had given him the property to be pawned, while in this court he stated, that Deenoo had thrown the property on the road.

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June 11.
Case of
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He named no witness in his defence. The prisoner was formerly sentenced by the sessions judge to four (4) years' imprisonment, on conviction of having entered the house of one Dossee Bewa with intent to steal. The law officer convicted the prisoner, on violent presumption, of burglary and theft, and concurring in the finding, I sentenced him as stated in the proper column.

Sentence passed by the lower court.—Six (6) years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—As soon as the neighbours heard of the theft, suspicion fell on the prisoner, and the prosecutrix went to his house and accused him. He attempted to leave his house, but was immediately stopt and secured, and part of the stolen property found on his person. The prisoner has appealed from the sessions judge's order, convicting and sentencing him, as an old offender, to six (6) years' imprisonment. He states in his appeal that the prosecutrix came to his house, to tell him of the loss of her property, and as he was a notorious thief-catcher, to request his aid in recovering it; that he was about to proceed to the thannah to give information when one Damo came to his house with some of the stolen property and threw down before him; that having been recently ill, he was too weak to secure Damo himself, and therefore called out for assistance; the police came and finding the property in his house, charged him with the robbery.

This is far too improbable a story to be believed, and is opposed to the statements made by him before the magistrate and sessions judge. I see no reason to interfere with the order of the sessions court.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT AND ZAKER MAHOMED

versus

GUNEE MOSYA.

RUNGPORE.

1853.

June 11.

Case of GUNNEE MOSYA.

Prisoner acquitted on a charge of dacoity attended with murder, the statement regarding his recognition not having been made till five days after the occurrence.

CRIME CHARGED.—1st count dacoity attended with the murder of Mendee Bewa in the house of the prosecutor, and plundered property value rupees 27-5, on the 7th November 1852, corresponding with 23rd Kartick 1259 B. S.; 2nd count, being accomplice to the commission of the above crime, and 3rd count, wilful murder of the said Mendee Bewa.

Committing Officer—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. William Bell, officiating sessions judge of Rungpore, on the 11th May 1853.

Remarks by the officiating sessions judge.—The case was first brought before the sessions in March, but, owing to the absence of two essential witnesses, it was, on the representation of the government pleader, postponed for six weeks and was concluded on the 11th of May.

The prosecutor states, that on the night of the occurrence he had had his meal and gone to sleep, when about one in the morning he heard a noise and going out saw some 50 or 60 men assembled with *lattees* and *mussals*; he roused the alarm and two men came forward and threatened him, but he struck them with his *lattee* and drove them away, and that by the light of the *mussals* he recognized the prisoner and several others, and they plundered his house while he remained at a little distance from the house. That afterwards, when he returned, he found Mendee, the deceased, fallen down and wounded by a spear, and that she then told him Gunee and Ullee had wounded her; that he told the neighbours that night whom he had recognised, &c., &c.,

Witness, No. 1, Balool.—Deposes, that on that night he was sleeping when he was roused by hearing that a dacoity was going on at Zaker's house; he went there and saw them in all 50 or 60 men coming out; he recognised Ullee and others, but not the prisoner, Gunee, they had *mussals*, &c, &c. He went to prosecutor's house and found Mendee Bewa wounded and bleeding; she said she was wounded by Gunee with a spear on the head, and that Ullee had struck her on the side with a *lattee*. (In fouzdarry evidence, he said he recognised Gunee.) He never said he recognised the prisoner before the magistrate; he simply stated that the prosecutor said he himself recognised him.

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Witness, No. 2, *Chamaroo.*—Heard the noise and going there, saw some 40 or 50 persons running away to the south; in their hands were *lnttees*, &c. He went to Zaker's house and saw Mendee Bewa lying down by the door with a bleeding wound on her head, and the mark of a blow on her side; she was unable to speak; he spoke to her but she did not answer; Zaker told him that a dacoity had taken place and that she was wounded, and enumerated five names, the prisoner at the bar amongst them as the dacoit. The witness then went home and returned the following morning, when Mendee in answer to his enquiries said that Ullee struck her on the side and Gunee (the prisoner) wounded her with a *soolfee.* Mendee did speak and name the prisoner on the night of the occurrence.

Witness, No. 3, *Haooah.*—Heard the noise and saw the dacoits escaping and heard from Zaker that Gunee, prisoner, and others had committed the dacoity; did not see Mendee that night, but did the following morning, when she said Gunee wounded her with a *soolfee* and Ullee struck her with a *lattee.*

Witness, No. 4.—Merely a witness to the sooruthal.

Witnesses, Nos. 5 *and* 6.—Were witnesses to Mendee Bewa's deposition, in which she accused Gunee, the prisoner, of having struck her on the head with the spear.

Witness, No. 10.—Heard the noise and went to the spot and saw Mendee lying there wounded, the next day returned and heard her name Gunee.

Witness, No. 11.—Heard the noise and went to the house, and saw Mendee lying there wounded and insensible.

Witness, No 9, *Dr. Walter.*—States, that the woman died of a compound fracture of the skull, the wound appearing to have been caused by a small sharp pointed instrument.

Defence.—The prisoner, Gunee, pleads not guilty, and says there is enmity between him and the prosecutor. He asserts he was at Puchaghur on the night of the occurrence.

Witness, No. 12, *Dedarbux* alias *Muddabux.*—Says, that on the night in question, the prisoner slept at his house, having been with him at the haut, he clearly swears to the day of the week, but cannot tell the name of the present day of the week.

Witness, No. 14, *Badhaloo.*—Knows the prisoner, was at Puchaghur with Muddabux.

Witness, No. 15, *Hoodor.*—Knows that they were at Puchaghur, knows nothing of a quarrel.

Witness, No. 17, *Pajoo.*—Knows nothing.

Witness, No. 18, *Pyjaroo.*—Knows nothing.

The case was not well investigated, and the magistrate was so dissatisfied with the darogah's proceedings, that he suspended him for six months. The evidence implicates Ullee as much as Gunee, and I do not see why the magistrate did not commit

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June 11.
Case of
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both, if he thought proper to commit either. In his roobakaree, releasing Ullee, he says that the quarrel between the prosecutor and Ullee is clearly established; that the property (a *thalee*) found in his house is not proved to be the prosecutor's and that, although Mendee implicated him in her deposition, it appears she was struck by Ullee immediately after she was wounded by Gunee, and, therefore, he doubts whether she could really have seen him strike her and that no one else saw him strike her, and therefore the proof is not clearly established. It appears to me that if he accepted the evidence of the witnesses as regards Gunee, their testimony, as to Ullee, holds equally good and that the deposition, of the wounded woman, must be taken entire, or rejected, and that, therefore, Ullee should have been committed also.

Opinion and recommendation of the sessions judge.—I see no reason to discredit the evidence, and would convict Gunee of dacoity with murder, but considering that the infliction of the wound, from which she died, rests solely on the woman's deposition, and the fact of her having been thirteen days without medical treatment, and her having been brought into the station at the very time inflamation was probably at its highest, I do not recommend capital punishment, but suggest fourteen years' imprisonment with labor and irons in banishment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The only proof adduced against the prisoner is the deposition of the woman, Mendee, taken at the thannah, on the 12th of November, five days after the dacoity. She then stated that Gunee the prisoner speared her in the head, and Ullee struck her with a *laltee* on the body, she also added that Gunee was indebted to her. None of the neighbours, who saw her that night, mention in their mofussil statements having heard from Mendee that she had been wounded by Gunee and Ullee; they only speak to the fact of having seen her wounded, and Zaker, the prosecutor, alone mentioned at the thannah, on the 12th November, that he recognized Gunee among the dacoits.

It was only after the case came before the magistrate, that the neighbours deposed to having heard Mendee mention the name of Gunee on the morning after the dacoity.

I consider the evidence insufficient to convict the prisoner, Gunee, of any part of the charges against him and order his release.

PRESENT:

J. R. COLVIN, Esq., *Judge*.

GOUR MUNDLE AND GOVERNMENT *versus* ANNUND BHOOMIJ, CHOWKEEDAR.

WEST BURDWAN.

1853.

June 13.

Case of ANNUND BHOOMIJ, CHOWKEEDAR.

Prisoner convicted of burglary and theft and sentenced, being a chowkeedar, to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, with committing a burglary in the house of the prosecutor on the night of the 28th of October 1852, corresponding with 13th Kartick 1259 B. S., and plundering therefrom property valued at rupees 4-5-5, and 2nd count, with knowingly receiving and having in his possession property acquired in the said burglary.

CRIME ESTABLISHED.—Burglary in the house of the prosecutor and plundering therefrom property valued at rupees 4-5-5.

Committing Officer—Mr. W. J. Longmore, officiating joint magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 15th March 1853.

Remarks by the sessions judge.—The prosecutor's statement before the sessions court was, that the chowkeedar Nuffur, witness No. 1, had given notice of the burglary at about 3 in the morning of the 14th Kartick; that he and the other witnesses to the circumstances then accompanied the said chowkeedar, in pursuit of the robbers; that they came up with them at about three *russees* distance from the prosecutor's house, when the chowkeedar knocked the prisoner (who was carrying part of the recovered property,) down with a *lattee* and secured him; that the other robbers, none of whom could be recognized, thereupon threw down the rest of the plunder and made off; that when the prisoner was questioned he acknowledged the robbery and mentioned three persons, named Saugur, Amrit and Cheedam, among others, as his accomplices in the deed; that as Mothoor, the father of Cheedam, lived close by, the chowkeedar was sent to his house to enquire about the said Cheedam; that the said Mothoor then came up to the party, with a *bora* or bag of *dhan* upon his head, which he gave up as the proceeds of his son's crime, and promised to point out the rest of the robbers and property, in the event of no complaint being made against him; that notice was then given to the darogah of Chatna, who sent his mohurrir to make the necessary investigation; that the prisoner, in the mean time made his escape from custody but, thereafter, gave himself up voluntarily to the darogah, who sent him to the mohurrir, before whom he willingly confessed, and that the paddy, bowl

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of dried curds and pitcher of oil, recovered from the robbers, were his and formed the whole of the property abstracted from his premises by the robbers.

Two depositions were given by the prosecutor at the thannah, on the 15th and 16th Kartick. In the first he made no mention of the proceedings of Mothoor, the father of Cheedam, and said that his brother, Goverdhun, had been the first to perceive the robbers engaged in the commission of the burglary, when he was going to take his buffaloes to pasture in the morning, and that he was the person who had called upon the chowkeedar and witnesses Nos. 2 and 3, to pursue the robbers; in the second he detailed Mothoor's proceedings and confessed that he had not mentioned them, at first, because he did not know whether he would be able to fulfil his promise of producing the rest of the robbers and property or not.

The prosecutor's deposition before the officiating joint magistrate was similar to that given before me, hence it became evident, that it was his intention to shield the chowkeedar from the consequences of his absence from his beat, and that he had, at one time, been inclined to treat with Mothoor.

The confession of the prisoner in the mofussil, which seemed perfectly voluntary, named Saugur and Amrit Baorees, witnesses Nos. 9 and 10, (admitted by the officiating joint magistrate, but not to be found when the trial was before the sessions court) as well as Cheedam, and also implicated the chowkeedar, witness No. 1, as the contriver of the dacoity and the person who had advised him to make his escape.

Before the officiating joint magistrate the prisoner declared, that his mofussil confession had been extorted by violence; that he was going to purchase *dhan* when seized, on the morning of the 14th Kartick, and that he had been on his beat, as chowkeedar, at Khoondooliah on the previous night.

His defence before the sessions court, which was not supported by the evidence of his witnesses, was similar, but he added that he had been bargaining for *dhan* with the prosecutor himself, and that his seizure was the result of dispute about the price that was to be paid for it.

The evidence of the prosecutor clearly proved, that a large hole had been made in the wall of the prosecutor's house; that the receptacle for paddy therein had been cut open; that the prisoner had been knocked down and secured, three *russees* from it, with part of the duly identified property in his possession; that the rest of the articles recovered had been thrown down by his accomplices, when they made their escape, and that the prisoner had fled from custody and, thereafter, returned to it of his own accord,

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The *futwa* of the law officer convicted the prisoner of the burglary on "*zeena ghaleb*," or violent presumption, and decleared him liable to '*Tazeer*' at the discretion of the *hakim*. As I entirely agreed in this finding, I convicted the prisoner in accordance with it, and, in consequence of his being a chowkeedar, sentenced him as noted.

I at the same time direct that the neglect of the chowkeedar Nuffur, witness No. 1, and the strong suspicion of complicity attaching to his conduct, should be brought to the officiating joint magistrate's notice.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor in irons, and (1) one year in lieu of stripes also with labor in irons, and (1) one year more in consequence of his being a chowkeedar; total (5) five years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoner's strongest point in his appeal petition is that he voluntarily appeared before the police; but in his statement before the officiating joint magistrate of 14th November, he distinctly admitted that he had been at *first seized* by the prosecutor, though he added what was not true, *viz.*, that he was by *him* made over to the thannah bukshee.

It is well established that the prisoner was seized with some of the plundered property, that he was kept in custody by the villagers, and that he made his escape from the guard before the police mohurir reached the spot. The statements regarding him have been perfectly consistent from the date of the first information, lodged by the prosecutor at the Thannah on the 15th October; the burglary having been committed before day-break of the 14th, and the thannah being 5 *coss* from the village. His own statements have been contradictory, and quite unsupported. The mere fact of his having appeared of himself at the thannah, after having effected his escape as above-stated, cannot be of any avail to rebut the strong proof, direct and circumstantial, of his guilt. The appeal is rejected.

PRESENT:

J. R. COLVIN, ESQ, *Judge.*

NIRRO KHAN AND GOVERNMENT
versus
NARRA MAUL.

WEST BURDWAN.

1853.

June 13.
Case of NARRA MAUL.
Prisoner convicted of burglary and theft and sentenced to four years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, with committing a burglary in the house of the prosecutor, Nirro Khan, on the night of 9th December 1852, corresponding with 25th of Aughun 1259 B. S., and stealing therefrom property valued at rupees 129-1, and 2nd count with knowingly receiving and having in his possession property acquired in the said burglary.

CRIME ESTABLISHED.—Committing a burglary in the house of the prosecutor, Nirro Khan, and stealing therefrom property valued at rupees 129-1.

Committing Officer—M. W. J. Longmore, officiating joint magistrate of Bancoorah.

Tried before Mr. Pierce Taylor, sessions judge of West Burdwan, on the 29th March 1853.

Remarks by the sessions judge.—The chowkeedar, witness No. 1, must have been privy to the burglary, committed in prosecutor's house, which is close to the roadside, as he awoke him shortly after it had been committed, and his beat is not an extensive one.

The property carried off consisted, as per prosecutor's statement, of 105 rupees which had been buried in the wall, some cloths, a *kutra*, a *lotah* and three jars of *koochra* or *mohowa* seed oil.

When the mohurrir of the thannah went to the spot, the *budmashes* of the locality were sent for and questioned. All denied knowledge of the burglary but the prisoner, who confessed immediately, and pointed out a jar of oil and a *seend-katee* hidden by him in the jungle, near his house. He also produced eight rupees as his share of the cash carried off, and named other persons as his accomplices, pretending that they had persuaded him to accompany them, and committed the offence, while he was waiting for them at a short distance. He affirmed that the *seend-katee* had been made over to him for concealment by his companions, and that the chowkeedar must have been cognizant of the deed, as one of the party had said, that there was no fear of his making his appearance while they were engaged in the burglary.

This story was repeated, with variations, before the officiating joint magistrate and both confessions, the capture of the prisoner, the *sooruthal*, and the finding and identity of the property were all sufficiently sworn to.

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June 13.
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The houses of the persons, named by the prisoner as his accomplices, were searched and they also confessed, but were released by the officiating joint magistrate, as no property, satisfactorily identified, was discovered in their possession and there was no circumstantial evidence against them.

Before the sessions court, the prisoner repudiated both his confessions and affirmed, that his mofussil one was the effect of violence, administered to him by the mohurrir, with the assistance of a burkandauze, named Madhub, and certain ghutwals, and that the foujdaree one originated in threats, made to him by the said mohurrir when he was *challaned.* The property and *seend-katee* were, he said, placed in the jungle by the ghutwals themselves, and that the eight rupees, produced by him, had been laid by for the payment of rent. These statements were supported by no evidence whatever and the prisoner declined to have three witnesses, whom he had named in the officiating joint magistrate's court, examined.

The prisoner's mark, by way of signature to the mofussil confession, had been omitted, but this was of no great consequence, as its authenticity was fully supported by the evidence of witnesses.

The prisoner was once before imprisoned for five years, for highway robbery, in the Pooroolia district, on the 19th March 1835.

The *futwa* of the law officer convicted the prisoner of the burglary, on violent presumption. As I considered the repeated confessions of the prisoner, backed by the oral evidence, and the manner in which the property and *seend-katee* had been found, and the former identified, to amount to full legal proof, I convicted him accordingly, and sentenced him as noted.

I, at the same time, ordered the highly suspicious nature of the chowkeedar's conduct, to be brought to the officiating joint magistrate's notice.

Sentence passed by the lower court.—Three (3) years' imprisonment with labor in irons, and one (1) year more in lieu of stripes; total four (4) years with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin).—The prisoner's appeal is on the ground of his confession having been extorted; but he declined to examine the witnesses on that point, whom he had summoned on the trial. His foujdarry confession is well attested; and it is the more to be relied on, as it differs in some material details from that recorded at the thannah. It admits what is rather to be regarded as accessaryship after the fact, and a subsequent knowing receipt of the stolen property, than accompliceship in the actual perpetration of the burglary; whereas, the thannah confession is directly to such accompliceship.

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I see no ground to doubt the substantial propriety of the conviction, or the fitness of the sentence.

The sessions judge has rightly brought the suspicious circumstances, connected with the conduct of the village chowkeedar, to the notice of the officiating joint magistrate.

PRESENT :

J. R. COLVIN, Esq., } *Judges.*
J. DUNBAR, Esq., }

GOVERNMENT
versus
BAROSSEE.

SARUN.

1853.

June 14.
Case of
BAROSSEE.

The prisoner having caught a thief entering her house through a hole in the wall, bound his arms with a rope and then killed him by blows on the neck with an axe. He was convicted of culpable homicide and sentenced to five years' imprisonment.

CRIME CHARGED.—Murder.

Committing Officer—Mr. J. F. Lynch, deputy magistrate of Sewan.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 17th May 1853.

Remarks by the sessions judge.—I refer this case both because I dissent with the *futwa* of the law officer, which convicts the prisoner of wilful murder, whereas I consider him guilty of aggravated culpable homicide only, and because I consider it a case calling for a higher degree of punishment than I have power to inflict.

The facts are briefly as follows:—The prisoner was sleeping at the door of his house when he was awakened by the noise of a thief, moving about inside and going round to the hole by which the man had effected his entrance; he caught him, as he was getting out of the hole, and having tied his arms with a piece of rope, he struck him several blows with a *kodaul* over the back of the neck, by which he nearly severed his head from his body and, of course, killed him on the spot.

When apprehended, the prisoner confessed both at the thannah and to the deputy magistrate, that he had killed the man; and to the latter officer, he also admitted that he had tied his arms before he struck him. On his trial here, he declares that he is in no way to blame, and that it was only at the instigation of the darogah that he had said that he had tied the man with the rope. He adds here also that when he got to the hole, the companion of the thief attacked him with a *lattee* and threw a pot with fire in it at him, when seeing the man just creeping out of the hole, he struck him with the *kodaul* and killed him on the spot. There is, however, ample evidence to show that the deceased had been tied up, as one of the only two witnesses to the fact (the other being the prisoner's own son)

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declares that the man was tied with the rope, and besides this the body itself bore marks of the ligature.

The moulvee convicts the prisoner of wilful murder but declaring "*kessas*" barred, it holds him liable to discretionary punishment by *tazeer*. I consider him guilty of culpable homicide only, though, with reference to all the facts of the case of an aggravated nature. Under these circumstances, I submit the proceedings for the orders of the Nizamut Adawlut, recommending that the prisoner be sentenced for the offence to fourteen (14) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Messrs. Colvin and Dunbar.)—We think it established on the evidence, that the prisoner came out of his house on the alarm of burglary during the night; that he found the deceased with his body half in the hole in the wall of his house and half out of it; that he then, in order to secure the deceased, bound his arms behind his back, and, while the deceased was in that state, hit him a number of blows on the neck with an axe by which the head was nearly severed from the trunk, so as to cause instant death. Allowance is to be made for the confusion and excitement of the prisoner at such a time, and under such circumstances. There is no evidence that any accomplices of the deceased in the burglary were seen near the spot at the moment, but he must have been uncertain as to the number of persons with whom he might have to contend. On the other hand, he had already bound the hands of the deceased, who was still half within the hole made in the wall, and he used a degree of fatal violence far beyond what was required for the purpose of apprehending or disabling the criminal.

We convict the prisoner of culpable homicide and, under all the circumstances, sentence him to imprisonment for five (5) years with labor, but without irons.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

LUKHUN KOIBURT AND GOVERNMENT

versus

BHOOBUN CHUNDER SINGH (No. 16), LOCHUN SINGH (No. 17), SHEIK NOBEEOOLLAH (No. 18), AND NAZIR KHAN (No. 19).

MYMENSING.

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Case of BHOOBUN CHUNDER SINGH and others.

Prisoner charged with wilful murder acquitted, the evidence being inconsistent, and the witnesses having been brought forward only after a considerable time had elapsed from the beginning of the police inquiry.

CRIME CHARGED.—1st count, wilful murder of Needoo Koiburt; 2nd count, being accomplices in the above crime, and 3rd count, being accessaries before and after the fact of the above murder.

Committing Officer—Mr. R. Alexander, officiating magistrate of Mymensing.

Tried before Mr W. T. Trotter, officiating sessions judge of Mymensing, on the 9th April 1853.

Remarks by the officiating sessions judge.—The particulars of the case are briefly these:—It appears from the record of the trial that on account of a theft having been committed in the house of one Sham Chowdhree, maternal uncle of prisoner, No. 16, one Rajkishen Koiburt was arrested by them on suspicion, and he having named the deceased, Needoo Koiburt, as being concerned in the theft, prisoner, No. 16, and the other prisoners together with others proceeded, on the afternoon of the 8th Bhadoon, last, Sunday, to the house of witness No. 2, Rajkishen Dutt, who is commonly called Kachin Talookdar, (whose servant deceased was) and they seized him and carried him off by force to the house of prisoner, No. 16, and there maltreated him till he was reported to have died, at least he was never afterwards seen, and the manner in which the matter transpired may be clearly elicited from the circumstances as detailed in the following evidence.

The prosecutor states, that when his brother, the deceased, was taken by the parties, witnesses Nos. 8 and 9, who are his relatives, shortly after followed to know the result, and seeing that the servants and the females of the house of prisoner, No. 16, were under great alarm, they entered the inner apartment and there saw No. 16 warming the body of Needoo Koiburt which was lying on the ground, when some of the people were desiring him to desist as life was extinct. On seeing this they (the witnesses) returned and related the affair to the prosecutor; it was then about 10 o'clock at night. That the next day he and others went and gave information at the thannah. That he subsequently heard that his brother's corpse was buried by them under some bamboos attached to the compound of No. 16's relative, one Badoo Roy, and that

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when the police arrived at the spot it was taken up from that place and thrown into a river.

Witness No. 1, *Sheik Monoo.*—Is the servant of No. 16, and he deposes that he was in No. 16's premises when he saw Nos. 16, 18 and 19 and others, taking the deceased into the inner apartment of No. 16; that No. 16 then ordered No. 18 to get a rope to tie him up with which he did; that witness then went to the field and when he returned, he saw him hung up by the feet to the beam of the building with the head downwards and No. 16 beating him with a *latee* of about five cubits long, and that while he (witness) was cooking his evening meal in an out-house, another servant, Chandar, ran up to him saying, that the man, who was brought on suscipion of having been concerned in the theft, had just died of the ill-treatment he received; that he then went in and saw that life was extinct and the female inmates were under great alarm about it, and No. 16's step-mother was reproaching him for the rash act that had been committed; that on the night of Tuesday following, No. 16 desired him and others to carry away the corpse from the premises of Bodoo Roy, where it was buried, and throw it into the river, which they declined to do, and witness went to another place whence he saw Nos. 17, and 18, Nasir Mahomed and Chandah, carrying the corpse away wrapped up in a black cloth towards the bank of a river where they put it on board a small boat, and went down the stream with it; that witness did not mention this to any one then through fear, but the fact was commonly talked about amongst the villagers.

Witness No. 2, *Rajkishen Dutt, or Kachin, talookdar, an inhabitant of that quarter.*—Deposes to the seizure by the prisoners and others of the deceased, his servant, on suspicion of theft and to his having subsequently heard from witness No. 8, and the prosecutor, that the deceased must have been killed; he also heard that his body was first buried in the compound of Badoo Roy, and afterwards taken away from that place and thrown into the river. This witness further deposes, that when the police had gone to the spot, the prisoner, No. 16, had entreated him and his Gooroo, Puddo Thakoor, (witness No. 23), to endeavor to effect a compromise of the case with the prosecutor for which he would return his *tumasooks*, but that he declined to interfere in the matter.

Witnesses Nos. 3, 4, 5, 6, 7, 10, 11 *and* 12.—Depose to having seen the prisoners and others seizing and forcibly carrying off the deceased towards No. 16's. house, and to their having subsequently heard that his body was buried and afterwards taken from thence and thrown into the river.

Witnesses Nos. 8 *and* 9.—Corroborate the statement of the prosecutor with regard to them, *viz.:* that they went to a *hât*

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and there hearing that No. 16 had seized the deceased on suspinion of theft, they went there and heard from Nojeeah and Salabutia, that No. 16 had killed him; that they went into the inner apartment and saw Nos. 16 and 18 warming the body of deceased, which was lying on the ground, and the females of the house were alarmed about it; that they returned and reported the affair to the prosecutor and afterwards heard, that the body was buried and taken up from thence and thrown into the river.

Witnesses Nos. 13, 14, 15, 16 *and* 17.—State, that they saw the corpse of a man floating down the stream in the Dhullye nuddee and that, when it stuck at a certain place, witness No. 15 pushed it away and recognised it to be that of Needoo Koiburt, with whom he was previously acquainted. These witnesses also heard of the manner of the death of the deceased as above described, and witness, No. 18, added, that he overheard prisoner No. 18, and one Salabutia relating to Khosboo that they had finished the business by throwing the body into the river, where this witness (No. 18) saw also a small boat. Witnesses Nos. 19, 20, 21 and 22's evidence is hearsay as to the fact of the seizure of the deceased at witness No. 2's, and to his death and disposal of the body. Witness No. 23 is the *gooroo* of witness No. 2. He and witness No. 19 add, that prisoner No. 16 had entreated them to effect a compromise promising to witness No. 2 to return his bonds, and they also heard of the affair as above described. Such is the evidence for the prosecution.

The prisoner, No. 16, in the thannah, before the magistrate and in this court, denied the charge, saying, that enmity exists between him and witness No. 2 and others, and that witness No. 2 has concealed the man and got up this false case against him out of revenge, adding in this court, that the man was seen after that date living, and that he (prisoner) was on the day of occurrence absent from home; and pointing out certain minor discrepancies in the evidence of the witnesses for the prosecution, and urging, that the evidence of witness No 1, was false, which he would prove from one Enaetoollah's case, and that his witnesses will also prove the enmity with witness No. 2, and that he got up this false case against him, and got his relations and ryots to depose accordingly. Prisoner No. 17, denied the charge and set up an *alibi*, urging, that he had been unjustly implicated in the case as he was a servant of No. 16. Prisoner, No. 180 that he has been falsely charged because he was No 16's servant and had also a quarrel with witness No. 2; that he went to Sumbhoogunge *hâut* on the day in question and returned home at mid-night, and knows nothing of the affair. Prisoner, No. 19, that he is a ryot of

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prisoner, No. 16, and consequently falsely charged; further, he has not been named by any of the witnesses.

The witnesses named by the prisoners gave evidence partially in their favor, but they could not clear themselves of the charge.

The jury, composed of three highly respectable vakeels of this court, recorded a verdict of guilty on the 2nd and 3rd counts, against Nos. 16 and 18, and one of acquittal for Nos. 17 and 19, in which I concurred, as the prisoners Nos. 17 and 19, do not appear to have taken any part further than to accompany Nos. 16 and 18 and others, to seize the deceased, being the servants of No. 16, and the witnesses for the prosecution do not say that these prisoners assisted the others in assaulting and ill-treating the deceased, when taken to No. 16's inner apartment. But the prisoners, Nos. 16 and 18, were seen by witnesses Nos. 1, 8 and 9 to ill-treat the deceased, and the presumption is strong that the deceased met with his death at the hands of these two prisoners, and his body afterwards made away with by them. The body was not found which may be accounted for by the fact, that the first enquiry by the Ghosgaon police was dilatory and one-sided, which induced the prosecutor to petition the magistrate on the subject, and that officer directed the Cutwalee darogah to investigate the case; thus ample time was afforded to the prisoners to make away with the body beyond the reach of discovery, and the prisoners had an opportunity to set up the plea that he had not died but was secreted by witness No. 2, and that he was seen by others. Yet the fact of their seizing and carrying off the deceased to No. 16's house and there tying him up in a most cruel manner and beating him, and afterwards warming the body as the last remedy in extreme cases, and the deceased having never after been seen, but on the contrary a body was seen floating in the river which was recognized by witness No. 15, as that of Needoo Koiburt, the alarm in which the female inmates of No. 16's house were when he was warming the body, and his anxiety, when the police went to the spot, to compromise the matter with the prosecutor who is witness No. 2's ryot by promising to return to No. 2 his bonds, all tend to point out that the deceased met with a violent death, and at the hands of prisoner, No. 16, who was assisted (as the evidence of witnesses Nos. 1, 8 and 9 prove) by prisoner, No. 18. Under these circumstances, I would recommend that the principal, No. 16, Bhoobunchunder Singh, be imprisoned for life with labor and irons in transportation beyond sea, and No. 18, Nobeeoollah, who is a servant of No. 16, to imprisonment with labor and irons for fourteen (14) years.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart).—The sessions judge states in his letter that the pre-

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sumption is strong, that the deceased met with his death at the hands of the prisoner and one Nobeeollah, who died in jail. He relies mainly on the evidence of three eye-witneses, Sheik Munnoo, Gour Mohun Koiburt and Chooloo Koiburt, by whom the prisoner was seen, it is alleged, to beat the deceased in his own house. Several witnesses are included in the calender to prove the fact that the deceased was carried off to the prisoner's house. The prisoner pleads not guilty and urges, that Kachin, talookdar, *alias* Raj Kishen Dutt, is at the bottom of the charge with whom he has disputes regarding land and money transactions; he further cites evidence to prove an *alibi*, and names witnesses who depose to having seen Needhoo Koiburt since the alleged date of his murder.

But little reliance can be placed on this evidence; until, however, there is some strong and satisfactory proof on the part of the prosecution, of the fact of the death of the said Needoo, it is unnecessary to go into the details of the evidence given by some twenty out of fifty witnesses named by the prisoner.

And on this particular point of the case, I observe that but *one* individual, a chowkeedar, Oonderah, speaks of having seen Needhoo *dead* and having recognised the corpse, which he describes as being quite fresh; the corpse of which the witness speaks was seen by him five days after the alleged offence and after it had been buried exhumed and then thrown into the river, and this in the month of August; I do not consider recognition sufficiently established under the above circumstances.

But it must be seen by what sort of evidence the allegation, that the prisoner carried off to his own house and there beat the deceased so severely that he died, is proved.

The first witness on the calendar is Sheik Monoo, he swears to having seen the prisoner and others carry off the deceased to prisoner's house, that he heard him order a rope to be brought for the purpose of hanging the deceased, he was prisoner's servant at the time, and he saw prisoner in the act of beating deceased, who was hanging by the heels from the beam. The occurrence it is reported took place on the 22nd August; a jemadar of police, and the Ghosegaon darogah were on the spot holding the investigation for some days when the darogah of the Cutwalee was sent in supersession of the other police officers, and on his arrival, Raj Kishen Dutt, *alias* Kachin, talookdar, Runjeet Chung, Gour Mohun Koiburt and Chooloo Koiburt and others were examined by him. In their depositions they too speak of the prisoner himself carrying off and assaulting the deceased in his house. Their evidence will presently be noticed.

It is a very remarkable fact that the witness, Sheik Monoo, should never have divulged what was within his knowledge till the 8th October, some six weeks afterwards when his first statement was made in the mofussil.

Raj Kishen Dutt and Runjeet Chung were examined on the 28th August; Gour Mohun on the 30th idem, and Chooloo on the 14th September for the first time.

Raj Kisken Dutt, who is alleged by the prisoner to be the principal mover in this case, deposes in the foujdaree court that he saw the prisoner and others carrying off the deceased towards his (prisoner's) house. He sent Gowree and Chooloo to release him, they returned in the evening and said deceased was killed, this he was told by the prosecutor. Witness heard the corpse had been thrown into the river. Witness admits he was looking after the case as deceased was his servant. In the sessions court he denies that he has any further to do with the matter than being a witness, and adds, further, that the prisoner offered to settle the matter by giving up certain claims which he had on witness.

Why this witness, having seen what he alleges he saw, and heard what he says he did hear, did not immediately give information against the prisoner instead of withholding it till the 28th August, is not explained.

The evidence of the other witnesses, Runjeet, Gour Mohun and Choolloo, are full of contradictions and statements equally improbable. It is highly improbable that they should have been allowed to go into the prisoner's house, and there have been allowed an opportunity of seeing all that is alleged to have taken place, and hearing the regrets of the females of the family. Gour Mohun and Chooloo went together, the former saw the deceased's head on the prisoner's shoulder who with others was endeavouring to revive him; the latter makes no mention of this in either of his depositions, though he swears he asked three of the females what had occurred.

The case is one of wilful murder, if proved, and nothing less than a capital sentence would satisfy the demands of justice; if however there be any doubt as to the trustworthiness of the evidence for the prosecution, the prisoner is entitled to an acquittal and must be released. I cannot credit evidence brought forward after so much delay, days in some instances, weeks in others, and only then when it was found necessary to depute a second police officer because the first failed to elicit the facts of the case. The prisoner is entitled to the benefit of a doubt and he must have it.

PRESENT:

J. R. COLVIN, Esq., } *Judges.*
J. DUNBAR, Esq., }

GOVERNMENT AND KISTNATH MUJOOMDAR

versus

MOHUMMUD ALLEE.

DINAGE-PORE.

1853.

June 15.
Case of MOHUMMUD ALLEE.
Prisoner convicted of wilful murder and robbery and sentenced capitally. Though the prisoner having severely wounded the deceased, still left him with a chance of life, this dose not diminish his guilt, in attacking with a mortal weapon the person whom he was appointed to guard.

CRIME CHARGED.—1st count, wilful murder of Kist Rajbunsee, 2nd count, severe wounding of Kist Rajbunsee and robbery of money from his person.

Committing Officer—Mr. E. C. Craster, officiating joint magistrate of Maldah.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 21st April 1853.

Remarks by the sessions judge.—On the 17th December 1852, the prisoner and the deceased started from the Chuppye cutcherry for zemindar's house, some twenty-four miles off, the latter carrying rupees 350 in a leather bag, and the former accompanying as a guard. In the afternoon the deceased, assisted by a man who met him about a mile from the cutcherry, returned and stated that while going through the "Jobun Robur" jungle, six miles off, the prisoner who was following, struck him with a sword once on the neck and twice on the wrist, and then carried off the money bag which had fallen. An artery in the wrist had been cut through, and the deceased died from loss of blood on the evening. Marks of blood were found in the jungle at the place described by the deceased, and a mark on his neck tallied with his assertion that his cloth had prevented the first cut from taking effect. The cuts on the wrist were evidently received while raising up his hand to protect his head.

On the evening of the 19th December, the prisoner made his appearance at "Ajo Moochea," (some thirty miles north) and asked a man, who kept an opium-shop, to let him remain there for the night. He called himself "Badul Khan" on his way home to Purneah with money given to him by his brother at "Rajshahye." The shop-keeper did not fancy a man with money and armed as a guest, but on his saying that he had only rupees 12 and giving up his sword (which was locked up in the strong box) he was allowed to remain. Next morning he was not forthcoming and no trace of him was found during the day, so the sword was examined and found to be stained with blood, when it was determined to give notice at the thannah. The opium-vendor with his son-in-law, on the following day, (21st December,) after going six miles towards the thannah, overtook the prisoner who said he had forgotten the sword, insisted that it had marks of rust not blood, offered

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first rupees 125, and then all, or rupees 272, if they would let him go. At the thaunah rupees 7 in a purse and rupees 265 in a leather bag were found on the prisoner. The opium-vendor declares, that the prisoner on coming to the shop looked unwell, and was muffled up in clothes; that he was seen next day two miles off prostrated by fever and on the following day immediately before he overtook him, going on a by-road avoiding the highway. This was in explanation of the prisoner having made so little progress, the deficit of rupees 85, and the prisoner's assertion that the shop-keeper had taken rupees 100 from him. I did not think the explanation satisfactory, and, therefore, did not give a reward which I otherwise should have done. The prisoner at the thannah told the same story as to having received the money from his brother, Gonhor Ally, at Rajshahye, and allowed that the sword was his own, but was rather confused in his statements as to the amount of the money. He was forwarded to the station where he arrived next day 22nd December, and stated that his name was Mohummud Ally; that he had been for thirteen years in the service of the zemindar (Anund Mohun, khezanchee, as a peadah); that four or five days before when there were no amlah, two other peadahs sent him off with a bag of rupees and said that they would follow; that he accordingly came to "Ruhumpore" and afterwards to "Ajo Moochea" where the opium-vendor and others took rupees 100 from him; that he was afterwards seized and taken to the thannah by the opium-vendor, &c., and that the sword belongs to the opium-vendor. The Chuppye darogah's report of the murder, dated the 20th, arrived on the 28th December, and the prisoner's answer was taken on the 18th January. The prisoner then repeated his second story as to having been sent by two other peadahs, with a bag containing rupees, 350 to wait for them at "Ruhumpore"; the opium-vendor having taken rupees 100 from him and subsequently having taken him to the thannah by being suspicious that all was not right. He declared that the sword was not his but the opium-vendor's, and that he had two names, "Mohummud Ally" and "Badul Khan" though always known by the former name at the Chuppye cutcherry. The prisoner before me pleaded not guilty, declaring that his brother peadahs Fekoo, witness No. 9, and Pulto had given him the leather bag containing rupees 268 to take to "Ruhumpore" where they were to follow; that the opium-vendor had taken rupees 100 from him; that the sword belongs to the opium-vendor, and that his, (the prisoner's) name is "Badul Khan", though he was called Mohummud Ally by the zemindar's mohurrir who engaged him, and objected to the other name. It is clearly proved, that the prisoner started in company with the deceased who had a leather bag containing

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rupees subsequently found on the prisoner; that the sword stained with blood is the prisoner's; that marks of blood were found in the place where the deceased declared he had been attacked and wounded by the prisoner; that the deceased's cloth was cut through and a slight mark or scratch left on his neck, tallying exactly with his assertion that his cloth prevented the first cut from taking effect; that there were two cuts on his wrist described by him, and that his death was caused by loss of blood (from the division of one of the large arteries according to the surgeon's certificate) in consequence of the said wounds. The prisoner's answers are incoherent and such as might be looked for from a man aware of his guilt, and without any hope of escape. The *futwa* of the law officer finds the prisoner guilty on violent presumption of stealing, accompanied with severe wounding which caused the death of the deceased and declares him liable to "*seasut.*" I consider the prisoner guilty of wilful murder and, not being aware of any palliating circumstance in the case, I recommend that he be sentenced to suffer death.

Remarks by the Nizamut Adawlut.—(Present: Messrs Colvin and Dunbar.)—We think that the guilt of the prisoner is conclusively established. The statement of the deceased, made at a very brief interval before his death from the flow of blood caused by the division of one of the large arteries of the wrist, was given by him before several persons on the day of the occurrence, on his making his way back to the zemindaree cutcherry from which he had started along with the prisoner. It directly charged the prisoner with the act, and was peculiarly free from any suspicion of malice or falsehood. The prisoner has never alleged that the deceased could have had any motive for charging him, especially under such circumstances, untruly. The evidence to the prisoner having been sent from the cutcherry along with the deceased, in order to guard him while carrying the money to the zemindár's house, has been perfectly clear and consistent from the beginning. The explanations of the prisoner as to his having been found in possession of the greater part of the money, together with a sword marked with blood, have been inconsistent, wholly unsupported, and clearly quite untrustworthy.

The act was deliberate and treacherous, and calls for a marked example.

The only circumstance in favour of the prisoner is that, after severely wounding the deceased, and possessing himself of the money, he left him with a chance of life. Such a fact is not, however, enough to justify his exemption from capital punishment, for death caused by an attack made with a mortal weapon

upon a party whom the prisoner had been especially appointed to guard. 1853.

We, therefore, convict the prisoner, Mohummud Ally, of wilful murder, and sentence him, as recommended by the sessions judge, to suffer death.

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We remark that the sessions judge ought to have examined the medical officer in his own court, and that he ought also to have questioned the witnesses, who had deposed before the magistrate as to their recognition of the prisoner's sword, on the same material point on the trial. The proof on the record is, indeed, complete for the conviction of the prisoner, but obviously important questions of this kind ought in no case to be omitted on a trial.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND BHYRO GHOSE

versus

MUSST. TILKEE (No. 1), AND FAKEER, CHOWKEEDAR (No. 2).

BHAUGULPORE.

1853.

June 15. Case of MUSST. TILKEE and another.

The prisoner was convicted of intentionally dropping the child into a well and thereby causing its death. There being extenuating circumstances in the case, she was sentenced to imprisonment for life in the zillah jail.

CRIME CHARGED.—No. 1, wilful murder of Soorujbullee, her infant, and No. 2, being accessary after the fact to the said murder.

Committing Officer—Mr. R O. Heywood, magistrate of Bhaugulpore.

Tried before Mr. R. N. Farquharson, sessions judge of Bhaugulpore, on the 17th May 1853.

Remarks by the sessions judge.—This case was tried with the aid of the law officer.

Musst. Tilkee, prisoner, No. 1, pleads guilty. Fakeer, prisoner, No. 2, pleads not guilty.

Musst. Tilkee not having milk for her infant, a boy five or six months old, threw it into a well, and next morning the body was taken out in presence of several people, witnesses Nos. 10, 5 and 6, and notice sent to the thannah by Fakeer, chowkeedar, who there stated, that the child had died a natural death; that its burial had been stayed by the putwaree, because it was rumoured that the child had been killed by a jackal. The jemadar and darogah of Umurpore thannah went to the spot; Musst. Tilkee confessed; an inquest was held on the body which was afterwards sent into the sudder station, but was too much decomposed to allow of examination; the civil surgeon, however, records that there were no external marks of violence, and that the skin had not the appearance of that of a drowned person. The connection of the prosecutor, Bhyro

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Ghose, putwaree, with the case happened as follows:—On the morning in question, he was going through the village of Rajpore where the prisoners reside, when he heard a report that Gungaram's child had been drowned, he then went to the cutcherry and sent for the chowkeedars, Fukeer and Bondoo, who told him the child had died a natural death; suspecting the truth of this story, he sent Fukeer to give notice at the thannah, who there made the attempt to mislead the police which has caused his arraignment; he deposed on oath before the darogah of Umurpore that the putwaree had stayed the burial of the dead child, because he heard it had been killed by a jackal, but he, Fukeer, knew it had died a natural death.

The evidence of witnesses 5, 6 and 10, clearly corroborates Musst. Tilkee's confession, she was seen at night near the well and something was heard to drop into it. Suspicion was excited and she was questioned but evaded answering; early next morning the well was searched and the child's body found; the well belonged to Fukeer, chowkeedar, who is also proved in evidence to have been on the spot when the body was taken out. Witnesses 13 and 14, attesting witnesses to the deposition of Fukeer taken before the darogah of Umurpore, on the evening of the 9th April 1853, appear before this court and authenticate the deposition. Mussat. Tilkee is proved to be in very indigent circumstances and not to have had milk for her infant, *vide* evidence of witnesses Nos. 6 and 12, the latter being the temporary wetnurse of the deceased and having given it milk late in the evening of the day in question.

The prisoner, Tilkee, makes no defence; throws herself on the mercy of the court.

Fukeer acknowledges having seen the body taken from the well, and having told a different story at the thannah.

Two witnesses, Nos. 5 and 11, speak to the good character of Fukeer.

The law officer gives a *futwa* of guilty of murder against Musst. Tilkee, rendering her liable to punishment by *deyut*, in consequence of the relationship of mother and child. The prisoner, Fukeer, he finds guilty on the second charge as including connivance and privity after the fact, and adjudges him liable to punishment by *tazeer*.

I concur in this *futwa*, except in considering Musst. Tilkee liable to suffer the extreme penalty of the law. There are however extenuating circumstances in her case which invoke mercy; poverty and want of sustenance for the child in an ignorant simple woman, which prisoner evidently is, should be taken into consideration. I recommend, therefore, that Musst. Tilkee be imprisoned for life in the Bhaugulpore jail with labor suited to her sex. With regard to Fukeer, who

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perjured himself with the evident purpose of concealing a heinous crime, I sentence him to five (5) years' imprisonment with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Of the guilt of the unfortunate woman, Musst. Tilkee, there can be no doubt. Looking to the precedents, in this Court, in cases of a similar nature the punishment proposed by the sessions judge seems just and proper. The Court accordingly sentence her to be imprisoned for life in the zillah jail with labor suited to her sex. They further approve of the sentence passed upon the male prisoner.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

TEENCOWREE DOWLEA, AND GOVERNMENT

versus

NOBEEN MAJHEE BAGDEE.

HOOGHLY.

1853.

June 16.
Case of
NOBEEN MAJHEE BAGDEE.

The prisoner charged with dacoity was taken in the fact, and confessed. Sentence of the sessions judge confirmed.

CRIME CHARGED.—With committing dacoity in the house of the prosecutor, and plundering property from Troilokho Chundalinee to the amount of rupees 16-9-6, on the night of the 19th November 1852, corresponding with the 5th Ugrahun 1259 B. S.

CRIME ESTABLISHED.—Dacoity.

Committing Officer—Mr. R. B. Chapman, officiating magistrate of Hooghly.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 3rd February 1853.

Remarks by the officiating sessions judge.—The prisoner is charged with committing a dacoity in the house of the prosecutor, and plundering property from Troilokho Chundalinee to the amount of rupees 16-9-6, on the night of the 19th November 1852. Before the police and the magistrate he confessed to having accompanied 9 or 10 others to the house of the prosecutor to commit the dacoity, remaining outside when the rest entered and plundered. Before the sessions he pleads not guilty. Prosecutor lives in Juroor thannah Donykalee, he deposes that the door of his house was broken open and on the dacoits entering, they beat him with bamboos, they then entered in an inner room where his adopted daughter was then sleeping and plundered from her the ornaments, she stated at the thannah, but which prosecutor, cannot specify.

Witnesses Bonmally and Ram, chowkeedar, depose to having gone to the prosecutor's house, on seeing the light of the mussals and hearing the noise, they were joined by the witnesses,

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3 and 4, the dacoits were then making their escape and they seized the prisoner who confessed.

The confession, according to the record, has been regularly taken and witnessed, and on it and the evidence of the prosecutor and witnesses, 1, 2, 3, 4, I consider the charge established. With advertence to the youth of the prisoner, his apparently having been enticed into the crime by others, and its being the first offence charged against him, I sentence him to imprisonment only for eight (8) years with labor and irons. Another of the dacoits who also confessed, died in jail before the commitment.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The case is as clear as it could well be. The prisoner was taken in the act; and he subsequently made free and voluntary confession, both before the darogah and the magistrate. The appeal is rejected.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

AND

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT

versus

KADOO (No. 2), DOJUKEE (No. 3), AND EDUN (No. 4).

SARUN.

1853.

June 17.
Case of
KADOO and others.

Prisoners convicted of manslaughter, inhaving killed a thief whom they had caught and secured in the act of committing a burglary, and sentenced to 7 year's imprisonment.

CRIME CHARGED.—Wilful murder.

Committing Officer—Mr. J. F. Lynch, deputy magistrate of Sewan.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 19th May 1853.

Remarks by the sessions judge.—I refer this case both because I dissent with the *futwa* which convicts the prisoners of wilful murder, whilst I hold them guilty of culpable homicide only; and because I consider, with reference to all the facts of the case, that they are deserving of a higher degree of punishment than I have power to inflict.

This is a very aggravated case of thief-killing, in which it appears that the three prisoners after having captured a thief, who had robbed the house of one of their number, (Kadoo) threw him down, and whilst two of them (Dojukee and Edun) held him down, Kadoo himself went into the house brought out a *koodal*, or pick-axe and with it cut the man about the throat, and in fact nearly severed his head from his body, causing instantaneous death.

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others.

From the first all the prisoners have admitted that they killed the man, and this admission they repeat at their trial, though they plead, in extenuation of the act, that the deceased made much resistance and they were afraid if they had not killed him, he would have killed them. Dojukee on the trial states, that on his trying to secure him, the deceased knocked him down senseless and that, when he came to himself, he found him lying there with his head nearly cut off; but this is quite opposed to the account he first gave of the thing, for he then stated that the companions of the deceased struck him, with a *lattee* and ran off upon which he became angry and hit deceased with a *lattee* he took from him, and broke his arm and then assisted in holding him down, whilst Kadoo went and got the *koodal* and killed him.

Both Kadoo and Edun also speak of the deceased as having offered much resistance and the latter adds, that whilst he was struggling with him on the ground, Kadoo went and got the axe and killed him with it, and though I conceive it probable that the deceased really did make much resistance (and the fact of one of his arms being broken, I think, bears out this opinion) still I hold that it is clearly shown that he had been fully secured when they killed him. All the prisoners admit this in their confessions, both at the thannah and to the magistrate, and though they give a somewhat different account of the thing now, I see no reason to doubt the truth of what they then said, and, under all the circumstances of the case, cannot but think that they are guilty of having killed the man after he had been secured, and after all opposition on his part had ceased.

The moulvee convicts the prisoner Kadoo of wilful murder and the other two prisoners having aided him in it, but he holds *kissas* barred, and declares them liable to punishment by *tazeer*. I consider Kadoo guilty of aggravated culpable homicide and Dojukee and Edun of being accomplices in it and, with reference to the facts of the case, recommend that Kadoo be sentenced to fourteen (14) and the other prisoners to ten (10) years' imprisonment, each of them with labor and irons.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart. and Mr. H. T. Raikes.)—It is clear from the admissions of the prisoners and from the evidence of the witnesses who reached the spot, on hearing the prisoner Kadoo cry out, that all the prisoners had secured the deceased who had, as they alleged, committed a burglary in the house of the prisoner Kadoo. Having secured him they all, one aiding the other, continued to maltreat him, during which time was given for the prisoner Kadoo to take up a *kodalee* from his house adjoining, and to rejoin the other prisoners who had held the

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deceased down; when in concert they killed him. Had the prisoners killed him in self-defence, or had they shown any grounds for leading to the conclusion that they considered themselves in danger of their lives, no charge could have been brought against them. But it was otherwise. Three men had overpowered deceased, and they might, without proceeding to extremities, have secured him and made him over to the police. The defence must be taken to be good in the absence of any refutation of the pleas urged by the prisoners. Receiving it, however, as it is recorded, nothing can justify the taking of life under the circumstances stated by the prisoners themselves. We convict them of manslaughter only, as we do not consider the act to have been committed with deliberation. It is however necessary to check acts of violence, tending to such serious results, when by the ordinary course of procedure redress is attainable. If the prisoners, having secured the deceased, had made him over to the police instead of taking the law into their own hands, the ends of justice would have been satisfied. We sentence the prisoners, their guilt being, as we think, of the same degree, to seven (7) years' imprisonment with irons and labor.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

GOVERNMENT

versus

KANDOO SIRDAR (No. 1), SOOJEEB ROSHOOA (No. 2), SAHEBOOLLAH ROSHOOA (No. 3,) BASHEE SHEIKH (No. 5, APPELLANT), ROOPA ROSHOOA (No. 6).

RAJSHAHYE. 1853. June 17. Case of BASHEE SHEIKH and others. Prisoner convicted of knowingly receiving property plundered in dacoity. Appeal rejected.

CRIME CHARGED.—1st count, dacoity in the house of Ramlochun Boneek and plundering property to the value of Company's rupees 903-6; 2nd count, knowingly receiving the plundered property; 3rd count, accessaryship before and after the fact, and 4th count, privity.

CRIME ESTABLISHED.—Knowingly receiving property plundered in dacoity.

Committing Officer—Mr. S. F. Davis, joint magistrate of Serajgunge.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 22nd April 1853.

Remarks by the sessions judge.—This was a simple dacoity committed, according to the confessions of the prisoners, Nos. 2 and 3, by a gang of men who attacked and plundered the house of

1853. June 17. Case of BASHEER SHEIKH and others.

the witnesses, Nos. 1 and 2, who were brothers, and petty pawnbrokers and money-lenders, of property and cash amounting to the value of Company's rupees 903-6. The brothers thought they recognized the prisoner, No. 1, among the dacoits, which led to his apprehension, and the prosecutor recognized a *dhootee* he had on as his property, and he gave up a pair of *katta bazoo*, admitting that he had received them both from the prisoner, No. 3, and others, when returning from committing the dacoity. He made a confession to this effect both before the police and joint magistrate at Serajgunge; and both, the finding the articles on him, and the latter confession, have been fully proved in this court. In the house of the prisoner, No. 2, were found several silver ornaments numbered 3 to 9. All these the prisoner claimed, except a broken *bank mull* (No. 8) found in a *hauree* in a ditch. He claimed the other articles as his own, but quite failed to establish his right to them, and the discovery of the *bank mull* in the ditch, where they were found, was proved by two witnesses, the prisoner himself pointing out the place. A gold *nuth* (No. 9,) found in some grass, the prisoner claimed as his own, but brought forward no proof in support of his claim. On No. 3, were found several silver ornaments and of these the prisoner claimed those numbered 10, 11, 13, 14, 15 and 16, as his own and admitted they were found in his house, he likewise claimed two small *bars* of silver (No. 12) and 39 rupees 2 annas found in his house, but only one witness deposed that the property belonged to him, (this witness first denied that he was related to the prisoner, then said he was his cousin and it turning out he was his brother, he was made over for perjury to the joint magistrate and has been convicted) both these prisoners confessed both before the police and the joint magistrate, and the latter confessions have been fully proved to have been voluntarily made at Mr. Barry's jute screws. (These are not far from the joint magistrate's residence, and perhaps it would have been better if the joint magistrate had gone home for the purpose of taking them down.) On the prisoner, No. 5, was found a *dhootee* (No. 29,) and two pair of silver *tar*, or armlets (Nos. 3 and 31) on the arms of his two wives. The *dhootee* was not an article that in my opinion was capable of recognition, and the person, who it was alleged, had pledged the *tar*, No. 31, to the owner of the house was dead. The other *tar*, the prosecutor fully proved, belonged to him and had been pledged to him. The prisoner brought forward two witnesses to prove both *tars* were his own, but from the way they gave their evidence without scarcely looking at the articles, I place no reliance on their evidence. On the prisoner, No. 6, were found a necklace with silver beads, called a *mohun-mallah*

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(No 22,) and a pair of silver ear-rings (No. 23,) both of which he claimed as his own. The owner of the house as well as his brother, deposed, the former belonged to their sister, but the evidence was not very satisfactory and the silver beads were so old that, except by the wearer, I doubt if it could be recognized. The sister of the prisoner deposed, that she had given his wife the ear-rings when they were married five years ago. That they were purchased by her husband, but who made them she could not tell. This was the only witness, unfortunately the ear-rings are not *a pair* or do not match, so it is quite impossible they could have been given as a *marriage present.* The prosecutor claimed them as pledged to him, and the party who pledged them was brought forward and deposed they belonged to his wife. Two witnesses, present at the time of the pledge being made, confirmed his statement. (The fact of the ear-rings not matching was not *then* brought to the notice of the court, so no question was put to the witness No. 35, on the subject.) On the above evidence and their proved confessions, I convict, Nos. 2 and 3, of being accomplices in dacoity and Nos. 1, 5, and 6, of knowingly receiving property plundered, in dacoity. In addition to seven (7) years' imprisonment, with labor and irons, I have imposed a fine of one hundred (100) rupees each, on Nos. 2 and 3 : and made over the money and silver *bars* found on No. 3 to the owners of the houses robbed, carrying them to credit of the fine or 57-8 ; and the joint magistrate (if the balance is not paid) has been directed to attach the property of the prisoners and to sell the same to realize the fine at the expiration of the period allowed for an appeal. The case was very well investigated by the police and there can be little doubt all the five prisoners belonged to the gang. The trial was held under Act XXIV. of 1843.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar).—The prisoner Bashee Sheikh is the only one who has appealed. As the property found in his possession has been proved to be part of the plundered property, and to belong to the prosecutor, the evidence, of course, suffices for his conviction on the 2nd count ; but I am at a loss to understand why the witnesses to his mofussil confession were not examined. Had that been proved, the conviction would have been of dacoity. The court see no reason to interfere with the sentence passed by the sessions judge.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

PRATAPEE KAYETANEE AND GOVERNMENT

versus

SALGARAM, (No. 1,) AND MUSST. NOWLOSHIA (No. 2.)

HAZAREEBAUGH.

1853.

June 17.

Case of SALGARAM and MUSST. NOWLOSHIA.

Two prisoners convicted of theft by administering intoxicating drugs, they having stupified the prosecutrix with some drug, and so possessed themselves of the key of the box containing ornaments which was in the charge of the male prisoner.

CRIME CHARGED.—Theft of property by administering intoxicating drugs, value rupees 239-7, and knowingly receiving and keeping the stolen property in the above case.

CRIME ESTABLISHED.—Prisoner, No. 1, felonious breach of trust, and prisoner, No. 2, being accomplice therein and of having in possession property so obtained.

Committing Officer—Captain G. N. Oakes, first class assistant, of Munbhoom.

Tried before Major J. Hannyngton, deputy commissioner of Hazareebaugh, on the 19th April 1853.

Remarks by the deputy commissioner.—The prosecutor, with two children and a servant, had gone on a pilgrimage from Benares to Juggernath, at which place all her companions died, and she was travelling homewards in company with a *fakir*. The prisoner, Salgaram, is the brother of her husband's brother's wife and resides at Topchanchee, and therefore on her arrival there she went to him for shelter. He accordingly took her to his house and at his desire, she placed in his hands some gold ornaments and other property she had with her. The prosecutrix states, that he put these things into a small box, and after two days, sent her to lodge in the house of the female prisoner Musst. Nowloshia. The small box was then put into a *patara* in Nowloshia's house, and the keys of both given to prosecutrix, who tied them in her clothes. She had been ailing with diarrhœa and they, on pretence of medicine, gave her some drug that stupified her and then, possessing themselves of the keys, they took away her property. On recovering she asked them for it but they denied having received any, and accordingly on the 1st October, she gave information to the road police who took her to the darogah by whom on the 3rd October, the houses of the prisoners were searched and in that of Musst. Nowloshia, a gold nose-ring a piece of French chintz and some other articles were found, and were claimed by the prosecutrix. The darogah reported that at the time of their apprehension the prisoners virtually confessed, each charging the other with the crime. The prisoners have, however, pleaded not guilty throughout. The evidence of the *fakir* Towokul, corroborates in the main that of the prosecutrix, and he proves the identity of the articles claimed by her. The

1853. June 17. Cases of SALGARAM and MUSST. NOWLOSHIA.

evidence of the witnesses to the apprehension of the prisoners, confirms the report of the darogah as to the prisoner, Salgaram, having confessed to having sold a valuable ornament, belonging to the prosecutrix, and that he offered to give her rupees fifty in lieu of it. The prisoner, Salgaram, in his defence says, that the prosecutrix is not his relative, but that she being sick, he put her to lodge with Musst. Nowloshia and he knows no more. Musst. Nowloshia in her defence says the things found are her own. A witness on her behalf states, that the nose-ring is his property. That he had it made up for her some years ago (she being in his keeping) and that a piece of wax was put in the centre of it. The French chintz which is apparently new, he identifies having seen some like it with the prisoner two years ago. The jury on this evidence find both prisoners guilty of theft by fraud, and Musst. Nowloshia guilty, besides, of knowingly having such stolen property in possession. There may be some technical difficulties in this case as regards the theft, for it rather appears that the property was placed in the charge of the prisoner, Salgaram. However I have no doubt but that he is guilty of a felonious breach of trust, and that Musst. Nowloshia is guilty of being his accomplice therein and also having in possession property so obtained. There is no sufficient proof of any drug having been administered. As evidence respecting the nose-ring has been brought forward on both sides, I notice here a remarkable instance of circumstantial evidence. The witness for the defence says that the ring had only wax in it, and this was the case when it was shown to him; but the prosecutrix had previously placed in the hands of the principal assistant a small gem that exactly fitted the sitting and this fitting is not accidental, for the shape which is slightly irregular corresponds. In a difficult case of this kind I attach much weight to this fact. I therefore in concurrence with the jury, find the prisoners guilty as above and sentence the prisoners to five (5) years' imprisonment each; Salgaram with labor in irons and Nowloshia without irons with labor suited to her sex. In this sentence I had in view Sections VIII. and IX. Act XIII. of 1850, but I am not perfectly certain of the applicability of this law to this case.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—On the review of the report of this trial in the monthly statements, the following remarks were communicated to the deputy commissioner, "The Court, having had before them your letter, No. 22, of the 23rd ultimo, submitting the statements connected with the sessions of jail delivery held by you in the month of April last, direct me to observe, with reference to the case of Salgaram and Nowloshia, Nos. 1 and 2, of statement, No. 6, that the conviction of felonious breach of trust

cannot stand upon a charge of theft by administering intoxicating drugs. If you thought that the evidence distinctly established a felonious breach of trust, you should have returned the record to the first class assistant, and directed him, under the Circular Order of 14th Nov. 1851, to add a count to that effect in the commitment. Before giving orders in the case, the Court would wish to have from you a more exact statement of its facts. If the box with the ornaments were taken by the prosecutrix with her to Nowloshia's house, she having the keys in her possession, and if the ornaments were abstracted by means of a clandestine taking of the keys, in whatever manner, from her, the case is plainly one of theft. The trust placed on the prisoner must be shown to have been uninterrupted, or to have been again renewed (which your remarks do not indicate), in order to sustain a charge under Act XIII. of 1850. You will submit a further explanation of the circumstances, and of the grounds of your opinion with reference to these remarks. The Court observe that Section IX. of that Act does not authorize a sentence of irons."

The prisoners having since appealed, the record has been examined by me, and I find that the case, supposing the facts alleged for the prosecution to be proved, is clearly one of theft, and not of a breach of trust.

In regard to the proof of the facts, I think that there is no ground to doubt the truth and fairness of the story of the prosecutrix. It is confirmed, as regards the prisoner, Salgaram, by the evidence of the witnesses Nos. 4 and 5 as to his admissions to the prosecutrix, soon after his apprehension, of his having sold one of her ornaments and being willing to pay her rupees fifty in lieu of it; and as regards the prisoner Musst. Nowloshia, by part of the stolen property having been found in her possession. Other evidence of a drug having been administered to the prosecutrix was not to be expected; but the fact is sufficiently established by her statement alone, if that statement be, as it seems to me to be, generally supported by the record, and in itself consistent and credible.

I, therefore, reject the appeal, confirming the convictions on the charge of theft by administering intoxicating drugs.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT AND CHAND MUNDUL

v.

MUDDUN HAZRA (No. 6), SULLEEM SHEIKH (No. 7), LALMUN, ALIAS LALA SHEIKH (No. 8), RAMKOOMAR GHOSE (No. 9), AMEER SHEIKH (No. 10), BAOOL SHEIKH (No. 11), PUDDO BEWA (No. 12), AND GOLJAR BEWA (No. 13).

RAJSHAHYE.

1853.

June 17.

Case of MUDDUN HAZRA and others.

Conviction of dacoity and sentence passed by the sessions judge confirmed in appeal.

CRIME CHARGED.—1st count, prisoners, Nos. 6, 7, 8, 10 and 11, with committing dacoity in the house of the prosecutor, Chand Mundul, on the night of the 15th December 1852, corresponding with the 2nd Poos 1259 B. S., and plundering therefrom property valued at rupees 512-8 annas, and 2nd count, with receiving portions of the above-mentioned property, knowing at the time that such property had been obtained by dacoity. Prisoner, No. 9, with committing the aforesaid dacoity. Prisoners, Nos. 12 and 13, with receiving portions of the above-mentioned property, knowing at the time that such property had been obtained by dacoity.

CRIME ESTABLISHED.—Nos. 6, 7 and 8, being accomplices in dacoity. No. 11, knowingly receiving property plundered in dacoity.

Committing Officer—Mr. F. Beaufort, officiating joint magistrate of Pubna.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 22nd April 1853.

Remarks by the sessions judge.—This was a simple dacoity, but property and cash were plundered from the house of the prosecutor, valued at rupees 512-8 the greater portion was cash in rupees and four anna pieces. There were according to the prosecutor, between ten and fifteen dacoits, and after they had plundered his chests, he called out to his brother to bring the *jute* (a weapon with a shaft and number of spikes at the end used to kill fish something like *grains*) when the dacoits put out their *mussals* and went away, but stopped shortly, having lost their way; his brother then threw the *jute* at them, and he following laid hold of the prisoner, No. 6, by the hair, and with the assistance of some of the villagers, who came up, apprehended him and found a silver *hauslee* in his waist-band which had been plundered in the dacoity. The prisoner confessed before the joint magistrate that he accompanied the dacoits and had taken the *hauslee* off the prosecutor's child's neck; he also admitted that he had been apprehended. Nos. 8 and 9, likewise confessed before the joint magistrate that they

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Case of
MUDUN
HAZRA and
others.

were concerned in the dacoity and some native ornaments Nos. 2, 3, 4 and 7, were delivered up by the step-mother of the former, and two articles, numbered 8 and 9, by the mother of No. 9, (who has been acquitted.) On the prisoner, No. 11, were found two silver rings and a broken *ballah*, worth about rupee 1 8 annas and which he, both before the darogah and joint magistrate, in his answer, said he had received from some men who one night had sojourned at his house, and in the mofussil answer he said, they told him they got them in a dacoity, but neither of the answers was certified as confessions, so could not be received as evidence. I have, therefore, on their confessions before the joint magistrate, which have been proved to have been voluntarily made, convicted, Nos. 6, 7 and 8, of dacoity, and sentenced No. 7, as he is quite a youth (not 19 I should say) to only five (5) years' imprisonment, the others to seven (7) years' each with labor and irons. No. 11, as having knowingly received plundered property, I have sentenced to three (3) years' imprisonment with labor and irons. When called upon for his defence, he claimed the articles as his own, but no one of his witneses knew any thing about them. The trial was held under Act. XXIV of 1843.

Against No. 9, there was no evidence, either to recognition or property found on him, only a wound on his leg; and as he had been named by one of the prisoners in his confession, as the person who had been wounded by the *jute*, he was made over to the sessions; but there was no evidence to warrant any conviction. No. 10, of his own accord appeared and delivered himself up to the joint magistrate, on the 30th December last, when he was sent out to the darogah. And on the 6th of January 1853, it is alleged, he made a voluntary confession, that he was concerned in the dacoity, and that he got a pair of *bankmulls*, which he had given to his concubine, the prisoner, No. 12. This woman had been apprehended sometime before and the *bankmulls* were found with an ex-chowkeedar, to whom she had made them over to keep for her. The articles were much broken and bent, and not capable of recognition in my opinion, and there was a great break down when evidence to the fact was taken, the prosecutor and some of the witnesses saying, that when they were taken from his house, they were perfect, and the prosecutor's brother, that they were in the broken state they then exhibited. Both these prisoners have been therefore acquitted, as I could place no reliance on the confession in the mofussil of No 10, and that of No. 12, has not been certified as a confession. Against No. 13, there was no evidence, except that she lived with her son, the prisoner, No. 8, who has been convicted of dacoity. She therefore was released without calling upon her for a defence.

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Case of
MUDUN
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Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—Three only of the prisoners have appealed; but I find the conviction good against all four. The answer of the prisoner No. 11, Baool Shickh, in the mofussil, contains a clear admission of his knowledge of this particular dacoity, and of his having received part of the plundered property. It ought certainly to have been taken down, as a confession, by the darogah.

The sentence of the sessions judge is confirmed.

PRESENT:

J. R. COLVIN, Esq., *Judge.*

GOVERNMENT

versus

RAMNIHORA RAI (No. 1), BYJOO MISSER (No. 2), AND CHUTTERLAL (No. 3).

SARUN.

1853.

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Case of
RAMNIHORA
RAI and
others.

Prisoner charged with the murder of a thief acquitted, there being no proof to show that the injuries which caused death, were not inflicted in the fight which took place in attempting to secure the thief.

CRIME CHARGED.—Murder of a thief, name and residence unknown.

CRIME ESTABLISHED.—Culpable honicide of a thief, name and residence unknown,

Committing Officer—Mr. R. J. Richardson, magistrate of Sarun.

Tried before Mr. C. Garstin, sessions judge of Sarun, on the 20th April 1853.

Remarks by the sessions judge.—This is a case of thief-killing in which it is probable that all the prisoners sent up for trial were engaged, but there is no evidence to convict either Byjoo or Chutterlal. It appears that some one had got into the house of the prisoner, Ramnihora Rai, of whom one was captured, and that he was then tied up, and so beaten that he died of the injuries the same night. The following day the prisoner took the body to the thannah and there openly stated, that the man had been caught on his premises, when he had been tied up and so beaten that he had died in consequence, but since then, not only Ramnihora himself, but all the other parties implicated, and also the witnesses who have given evidence at the trial, have all stated that the deceased, when opposed in his efforts to escape, stood up and fought with his opponents, and in this way met his death at their hands. It is, however, certain, that the body bore marks of having had the arms tightly bound and the doctor certifies that great injuries had been inflicted about the ribs, &c., which could hardly have been done in a stand up fight, and these facts, added to the confession of Ramnihora, leave no doubt, but that the man's death was caused by injuries inflicted after he had been captured The moulvee convicts the prisoner, Ramnihora Rai, of culpa-

1853. June 18. Case of RAMNIHORA RAI and others.

ble homicide and as, with reference to the foregoing remarks, I concur in this verdict, I have sentenced him as noted above, releasing the other prisoners as there is not sufficient proof in their case for a conviction.

Sentence passed by the lower court.—Imprisonment for four (4) years, and a fine of rupees forty (40), in default of payment to labour.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)---The evidence to the beating of the deceased, after having mastered and bound him is insufficient in this case. The medical officer's deposition on the trial is, "I did not observe on the arms marks of their having been bound, but there may have been notwithstanding." The evidence on that point on the trial is not strong and direct. I hesitate to uphold such a conviction merely on the record of a mofussil statement of the prisoner. The blows on the ribs may have been inflicted when the prisoner had been thrown down, and yet before he had been overcome and secured. The police mohurrir, in his evidence on the trial, speaks of the prisoner having said when he took the body to the thannah, that fighting with others of the party of thieves was going on when the deceased was surrounded and beaten. On the whole, I think the prisoner is entitled to the benefit of the doubts in the case, and acquit him.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT ON THE PROSECUTION OF CHEROO COWRAH

versus

DOOTEE COWRANEE (No. 1), AND PREMCHAND COWRAH, (No. 2).

24-PERGUNNAHS.

1853.

June 18

Case of DOOTEE COWRANEE and another.

Prisoner convicted on her own confessions of abetting in the murder of her own infant child, which she permitted to be killed by a man with whom she was about to elope.

CRIME CHARGED.—1st count, wilful murder of Beelasee, an infant girl aged 9 months, the daughter of prosecutor, Cheeroo Cowrah, and 2d count, being accomplices in the above crime.

Committing Officer—Mr. G. A. Paxton, assistant, exercising powers of joint magistrate in the 24-Pergunnahs.

Tried before Mr. W. I. H. Money, sessions judge of 24-pergunnahs, on the 21st May 1853.

Remarks by the sessions judge.—It appeared from the statement of the prosecutor, who is employed generally in beating the "*dhol*", that on the 21st Maugh last, he went to a neighbouring village to attend a marriage ceremony, leaving his wife (the prisoner) and his two young female children, and witness 7, Ishuree Cowranee, with her child in the house; that the next morning he was informed of the murder of his infant child, aged about 9 months; that he proceeded home, found his child with her throat cut, and ascertained from his wife that one Premchand Cowrah was the murderer: it further appeared, that this person had been carrying on an intrigue with the prisoner; that the prosecutor had heard of it from his neighbours and on one occasion had given his wife warning on the subject; that on the night of the prosecutor's absence, the prisoner was about to elope with Premchand Cowrah, when he suggested that the infant child should be made away with; that he seized the child from the mother, and after deliberately cutting the throat, threw the body into a tank, close to the prosecutor's house, assigning as a reason that the child would be troublesome.

The prisoner denied the charges, on which she was arraigned, in this court: in the mofussil, her admission amounted to a complicity in the murder: she alluded to her intrigue with Premchand Cowrah, to his frequently entreating her to elope with him, to her refusal to forsake her children, and his suggesting their destruction: to her going out on the night in question to fetch water from the tank, seeing Premchand Cowrah near there entering the house, to her taking up her infant child at Premchand's bidding, going out to to the tank, to Premchand taking the child from her arms, pressing the mouth and after cutting the throat, throwing the child into the water, to his desiring her to accompany him and from sudden reflection

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and fear for her own life, to her retreating and falling down at the threshold of her house. Before the magistrate she admitted going to the tank as described in the mofussil, giving up the child to Premchand Cowrah, going back to the house for her clothes and on her return finding her child murdered.

From the evidence of witness, No. 7, Ishuree Cowranee, it appeared, that on the night in question, the prisoner and herself were engaged in cleaning paddy; that the prisoner got up and removed her deceased infant child, who was asleep, to the house, returned and took some food, and subsequently went outside and fell down at the threshold, uttering a cry; that in reply to the witness's enquiries, she declared she had seen a spectre and could not find her child; that on the arrival of the neighbours, witness, No. 8, Kamdeb Cowrah, and witness, No. 9, Ramdhone Cowrah, the prisoner repeated the loss of her child, begged them to search, and particularly in the direction of the tank; that on espying her child in the water she went in herself and dragged it out, exclaiming that the throat was cut. This witness alluded to the existence of an intrigue between the prisoner and Premchand Cowrah, and to the prosecutor having spoken to her on the propriety of maintaining her character.

Witness, No. 8, Kamdeb Cowrah, and witness, No. 9, Ramdhone Cowrah, corroborated the evidence of the previous witness, as to their hearing cries in the prosecutor's house on the night in question, proceeding there and discovering the deceased infant as described.

Witness, No. 10, Soorjee Cowranee, deposed to the renounced intrigue between the prisoner and Premchand Cowrah.

Witness, No. 11, Ausgur Mundul, witness, No. 12, Chatow Chand Sheik, and witness, No. 13, Kulleemuddy Mullick, deposed to their seeing spots of blood on the cloth of Premchand Cowrah, on his apprehension.

The witness to the *sooruthal* deposed to the deceased child's throat being cut, there being a deep penetrating wound about two fingers long, and one finger wide.

The civil surgeon deposed to a wound on the neck of the deceased child, the large artery being divided and the œsophagus injured, from which death must have immediately ensued.

This is a most cruel case of infanticide, and it is much to be regretted, that the real perpetrator of the murder should escape : there was, however, no proof at all against Premchand Cowrah, nor any thing to connect him with this transaction, but the confession of the prisoner.

The law officer convicts the prisoner of privity to the murder, and declares her liable to *acoobut.* With the prisoner's admitted knowledge of her paramour's murderous suggestions,

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another.

it is difficult to account for her leaving her child with him for an instant, but with reference to her confession before the magistrate, which is the main evidence against her, she cannot be said to have participated in the murder, her guilt amounting to privity. I concur in the finding and recommend that the prisoner be sentenced to imprisonment for seven (7) years with labor suited to her sex.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The sessions judge is of opinion, that the prisoner's guilt amounts to *privity* to murder only, for which he recommends a sentence of seven (7) years' imprisonment with labour suited to her sex. He remarks " with the prisoner's admitted knowledge of her paramour's murderous suggestions, it is difficult to account for her leaving her child with him for an instant, but with reference to her confession before the magistrate, which is the main evidence against her, she cannot be said to have participated in the murder."

The following is an exact translation of the prisoner's foujdaree confession. On being brought up she denied having killed the child; she said that Prem Cowra, her paramour, killed it: since Bhadoon or Assin last, she had formed an intimacy with him, and he had urged her to elope with him. Prisoner continues, I said I had children and refused. Last Wednesday he came to me secretly, I was going to fetch some water, having put the child to sleep. I had been beating out rice with Issoree. I saw Prem standing near the tank, he said bring your child. After this we both entered the house; he took up the child; put it in my arms, and said come along; we both went to the ghaut; I said how can I go; I gave the child to Prem, and went to the house for my clothes; returned and saw the child had its throat cut; was murdered and thrown into the water. Prem said he had cut the child's throat with a knife, adding, never fear, people will say that a *bhoot* has done it, come along; he then came to lay hold of my hand, I ran away, and fell at the threshold of my house. Issoree came and took me up, and on her asking me, I told her all; the child was nine months old; Kam Deb and others, came and took out the corpse. The child was killed, because it would make a noise. On being required to explain a part of her mofussil confession, she admitted that she said at the thannah that Prem told her to kill the child; she refused and gave it to Prem, on which he killed it, adding that what she had said in the thannah, and also before the magistrate was voluntary.

It is necessary, however, in order to get at the true facts of this case, to fall back on the prisoner's mofussil confession, verified by witnesses and admitted by herself to have been made voluntarily.

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Case of
DOOTEE COW-
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another.

After speaking of her intimacy with Prem, and her husband's absence at some wedding party, she says, I went to fetch some water from a tank, and there saw Prem; he asked me to elope, I said I had two children, how can I leave them and go, when he said kill them, I refused. Prem and I entered the house, and he told me to take the child in my arms, I did so; went to the tank to the spot which I have pointed out; Prem took the child stopped its mouth, seized it and with a knife or something cut its throat, and threw it into the water, desiring me to come with him, I refused, and through fear fell down in the front of my house. Issoree and other neighbours came; I said who has carried away my child when they searched the house. I took Kam Deb with a light to the water, and pointed out the corpse floating in the tank, Kam Deb brought it out.

Prem killed the child; when I said I could not, do you kill it, when the child made a noise, he said he would kill it; this he said before he killed it. Prisoner goes on, Prem did not with his own hands kill the child. Both of us knew the child was an infant at the breast, and must be brought up. I refused to desert it, concluding, "in short he killed the infant Belashee."

Now these confessions, proved as they are by the witnesses to them, and confirmed by the circumstantial evidence of other witnesses, establish the prisoner's guilty acquiescence and complicity in the murder. They clearly show that she entertained the proposition to kill her child, and gave it over to the person who had made that proposition, with the view, as she confessed in the *mofussil*, that it should be killed by him. Before the magistrate, she did not refer to the murderous intention, but on being called upon for explanation, she referred to her mofussil confession which she said was voluntary.

The degree of guilt, disclosed by the prisoner herself, extends to the full measure of abetting in the murder; and though an offence of a still deeper dye, might perhaps on the premises be imputed to her, I feel it my duty to convict her of abetting in the murder on her own confessions, and sentence her to imprisonment for life in the zillah jail, with labour suited to her sex.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

KURREEMBUKSH AND GOVERNMENT

versus

PURAO (No. 9), KISHNA (No. 10), BYJOO (No. 11), BHAGERUTH (No. 12), ROONJUN (No. 13), AND JUGGUN, (No. 14).

PATNA.

1853.

June 18.
Case of PURAO and others.

Prisoners convicted of highway robbery attended with assault. In appeal sentence on four prisoners upheld and two acquitted.

CRIME CHARGED.—1st count, Nos. 9 to 14, highway robbery of property attended with assault, and 2nd count, Nos. 9 to 12, knowingly receiving a portion of property acquired by highway robbery.

CRIME ESTABLISHED.—1st count, Nos. 9 to 14 highway robbery of property attended with assault, and 2nd count, Nos. 9 to 12, knowingly receiving a portion of property acquired by highway robbery.

Committing Officer—Mr. L. S. Jackson, magistrate of Patna.

Tried before Mr. W. Travers, officiating sessions judge of Patna, on the 7th February 1853.

Remarks by the officiating sessions judge.—This was a well established case of highway robbery circumstantially proved against all the defendants. The prosecutor and witness, Luchmun, are servants of Mr. Dabreo, head clerk in the collector's office at Arrah, to which place they were travelling with some of their master's property and some of their own from Dinapore. About an hour after night fall, they were attacked near the banks of the river Soane by all the prisoners in a body, and in three of their houses the stolen property was subsequently discovered. No severe bodily injury was inflicted on the travellers, which it is to be attributed to their having offered no resistance. The *futwa* of the law officer convicts all the prisoners, and in this judgment, I concur. As the prisoners were not shown to be professional gang robbers, and as the neighbourhood where the crime was committed, though in the vicinity of their residence, is not notorious for outrages of this description, I was inclined to a more lenient punishment than under other circumstances would be required. The prisoners, Purao, Kishna, Bhageruth, Roonjun and Juggun were accordingly sentenced to seven (7) years' imprisonment, with labor and irons, and two (2) additional years in lieu of corporal punishment, altogether nine (9) years. The prisoner, Byjoo, being a watchman of the village of Moostafapore, was sentenced to nine (9) years and two (2) years, in lieu of corporal punishment, altogether eleven (11) years.

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June 18. Case of PURAO and others.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The recognition of the prisoners, Nos. 9 10, 11, and 14, is supported by the finding of property in the houses of three of them; but I find no sufficient evidence of this nature against the prisoners, Nos. 12 and 13; a *kumlee* is said to have been taken from Bhageruth, who claims it as his own though identified by the prosecutor; but there is no other criminating circumstance to give weight to this, and convert it into effective proof of this man's complicity in the robbery. I confirm the sentence passed by the sessions judge on the prisoners, Nos. 9, 10, 11, and 14, and acquit the prisoners Nos. 12 and 13.

PRESENT:

J. DUNBAR, ESQ., *Judge.*

BURROO KULLOO AND GOVERNMENT
versus
RAMDHONE HAREE

HOOGHLY.

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June 18. Case of RAMDHONE HAREE.

The prisoner was convicted of dacoity on his own confession and circumstantial evidence. The sentence of the sessions judge was confirmed in appeal.

CRIME CHARGED.---Dacoity attended with wounding in the house of the prosecutor, on the night of the 13th February 1853, corresponding with 3rd Phalgoon 1259 B. S.

CRIME ESTABLISHED.---Dacoity.

Committing Officer—Mr. R. B. Chapman, assistant magistrate of Hooghly.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 7th April 1853.

Remarks by the officiating sessions judge.---The prisoner has been committed chiefly on the confession which he made before the police, but which he denied before the magistrate. This confession tallying with the deposition of the prosecutor, and the evidence of the witnesses as to the attack on his house; and being supported by the circumstance of the prisoner having been wounded with the bricks thrown, as deposed to, by the witnesses at the dacoits; his having been absent from his house on the night in question, and giving an evidently fabricated statement of how he was wounded, from the proofs against him, and considering the confession and the circumstantial evidence referred to, he has been convicted.

It is his first offence; the wound which the prosecutor received from some of the other dacoits, when they were departing, is very slight. No property was taken, and if the confession is true, which it must be taken on one hand as well as on the other, the prisoner was enticed to go out to commit the crime, and not in any way a chief or ring-leader. He is evidently a

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HAREE.

poor and spiritless character, and considering all these circumstances and the fact of its being the first offence. I have sentenced him only for nine (9) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—I receive the confessions in the mofussil as true, both on the evidence which is clear and positive, and with reference to the fact of the apprehension and confession following the occurrence of the dacoity so quickly, the prisoner had scarcely time to make up a story, that which he subsequently told before the magistrate and at the trial is evidently false, not a word of the kind was said either to the chowkeedar or to the darogah on first being questioned by them. The prisoner alleges that thieves came to his house and beat him, but he has not attempted to account for the marks of burning on his hand, caused according to his confession by the lighted torch which he held during the dacoity. The sentence is confirmed.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

KALA CHAND PATAN ALIAS KALA PATAN.

HOOGHLY.

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Case of
KALACHAND
PATAN *alias*
KALA PATAN.

The prisoner was convicted of being an habitual and professed dacoit, and sentenced to imprisonment for life in transportation.

CRIME CHARGED.—Having belonged to a gang of dacoits.

Committing Officer—Mr. S. Wauchope, commissioner for the suppression of dacoitee.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 10th May 1853.

Remarks by the officiating sessions judge.—The commitment is made by the commissioner for suppression of dacoity, and the prisoner charged with having belonged to a gang of dacoits; he pleads not guilty. Before the commissioner he confessed to the charge stating that he was associated with two distinct gangs, one on this side of the river Hooghly under sirdars, called Bonamalee and Gobind, with others, and on the West side, under a sirdar, called Haroo. This confession is attested in form. In his more detailed confession taken before the commissioner, he confesses to the commission of thirteen dacoities.

The evidence against him before the sessions is his own confession before the commissioner, and evidence of an approver, called Gopal Doolai, who gives details of a dacoity in which the prisoner was engaged in the gang of the sirdar, Gobind, formerly headed by his father, Bheeka. I consider the offence, stated in the calendar, to be proved against the prisoner, and that he is an habitual and professed dacoit, and recommend

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Case of KALACHAND PATAN *alias* KALA PATAN.

that he be sentenced to transportation for life with labour and imprisonment beyond seas.

Resolution of the Nizamut Adawlut, No. 613, *dated* 3*rd June* 1853.---(Present: Mr. J. Dunbar.)—The Court, having perused the papers above recorded, connected with the case of Kalachand Patan, alias Kala Patan, observe, that the proceedings have not been rendered sufficinetly complete. It is necessary to guard against the possibility of a confession having been obtained, under any false hope of pardon or employment as approver held out by dacoits already on the list of approvers. The prisoner has pleaded guilty, and made a general confession; and detailed confession to thirteen dacoities is named in the calendar as part of the evidence against him. That confession, however, is not with the record nor is there any report from the serishtadar, mohafiz or other officer, showing that any of the dacoities confessed to, had actually taken place It is further to be noticed, that the prisoner makes no admission of personal acquaintance with the approver, he does not even mention his name. Conviction and punishment should be made to rest upon proof as full and convincing as can be procured. The court direct that the proceedings be returned to the officiating sessions judge, with instructions to complete the record in the manner above indicated, and to re-submit it without delay.

In reply to the above resolution, the officiating sessions judge reports as follows:

Referring to the orders of the Court No. 613, of the 3rd instant, in the case noted in the margin,* I have the honour herewith to re-submit the papers of the case with the reports required, to show that the dacoities confessed to have been committed, and with further interrogatories from the prisoner, of the description indicated by the court.

* Government, Prosecutor. *versus* Kalachand Patan, *alias* Kala Patan.

I beg, however, to point out that the resolution records, that the prisoner before the sessions, pleaded *guilty,* whereas on perusal of my report submitting the case, I think it will be found very distinctly to state that, he pleaded *not guilty*, but he confessed before the commissioner; and as before the sessions, this confession was denied, no admission of acquaintance with the approver of a self-criminating character was now likely to be given,

Remarks by the Nizamut Adawlut---(Present: Mr. J. Dunbar.)---There is, as the sessions judge observes, an error in the resolution of the 3rd instant, No. 613. The prisoner is therein represented as pleading "*guilty*" on the trial, whereas the words

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Case of KALACHAND PATAN, *alias* KALA PATAN.

were meant to apply to the prisoner's examination before the commissioner for the suppression of dacoity.

Having had the further information and evidence contained in the papers sent down by the sessions judge, in reply to the Courts' requisition, under consideration, I see no reason to doubt the fact that the prisoner did belong to a gang of dacoits. There is against him first, the evidence of the approver, Gopal Doolye, which is in accordance with the said Gopal's original confession, in which the prisoner's name is distinctly mentioned. Next there are the two confessions of the prisoner, before the commissioner, in one of which the particular dacoity is mentioned, at which, (according to the statements of both) the approver and prisoner, were both present. These confessions are fully verified, and lastly, in several instances, there are the reports of the police written at the time, showing that the dacoities confessed to, really did take place. This body of evidence is sufficient to prove, that the prisoner is an habitual and professed dacoit. The Court accordingly, sentence the prisoner, Kalachand Patan, to imprisonment for life, in transportation beyond sea.

PRESENT :

J. R. COLVIN, ESQ., } *Judges.*
J. DUNBAR, ESQ., }

GOVERNMENT AND LUCHMUN BULLAH

versus

DAYBOO (No. 19), AND ANORUTH (No. 20).

HAZAREEBAUGH.

1853.

June 18.
Case o DAYBOO and ANORUTH.
Prisoner charged with wounding with intent to murder acquitted, the evidence being unsatisfactory, and there having been great delay in the investigation of the zemindaree police.

CRIME CHARGED.—Wounding with intent to murder.

CRIME ESTABLISHED.—Wounding with intent to murder.

Committing Officer—Captain G. N. Oakes, first class assistant of Maunbhoom.

Tried before Major J. Hannyngton, deputy commissioner of Chota Nagpore, on the 28th April 1853.

Remarks by the deputy commissoner.—It appeared that on the 13th March last, the prosecutor with six companions were returning from the pursuit of game, and at sun-set, as they were passing through a low jungle, two gun-shots were discharged at the prosecutor, both of which took effect, inflicting on him four wounds, more or less severe, but not dangerous. This occurrence took place near the town of Jhalda, where there was a police station, and the police report shows, that on the same evening, information was given, and the prisoners, Dayboo and Anoruth, were then named as having fired the shots, and having been seen, on the spot, gun in hand immediately after the discharge. Through the whole of the proceed-

1853.

June 18.
Case of
DAYBOO and
ANORUTH.

ings, these main facts have been steadily adhered to by the prosecutor and his companions. The prosecutor is stated to be a man of low caste, and to have gained such influence over the zemindar of Jhalda, that he has made himself obnoxious to many persons. The zemindar has charge of the police, and consequently the enquiry is open to a suspicion, taint of its very source. The report of the 13th March, received on 17th March, is accompanied by the statement of the prosecutor's brother, whose information naming the prisoners is on hearsay, but the statement of the prosecutor himself, bearing the same date, was not forwarded till the 25th March. In this statement, the prosecutor named the two prisoners and another. But on further examination, on the 14th March, he named others and finally, ten persons were implicated and named by the witnesses to the fact. It is remarkable, however, that these witnesses, though all on the spot, were not examined till the 15th March, on which date their evidence was recorded at length. The prisoners were apprehended in their homes, on the 14th. Their answers have not been recorded. In the principal assistant's court, much delay occurred. The parties arrived on the 24th March, but no proceeding whatever was held until the 14th April. Before this court, three witnesses stated, that they saw the prisoners with guns in their hands on the spot, just after the shots were fired. One witness stated, that he saw the prisoner, Anoruth, only. These witnesses also stated, that there were several persons, some of whom they recognized in the jungle, near to the spot, and the general impression, conveyed by their evidence, is that a number of people were lying in wait and that the attempt to murder the prosecutor was all but openly made. One witness, named Lakhan Bhoomij, whose evidence, as recorded before the police, was most explicit as to his recognition of the prisoners and others immediately after the fact, stated that his evidence before the police was utterly false, and that he had given it under the instruction and threats of the prosecutor. The prisoners, in their defence, brought forward witnesses, who stated that at the time of the occurrence the prisoners were at their respective homes. The jury gave in a verdict of *not guilty*, stating that the discrepancies in the evidence for the prosecution led them to reject it. In my opinion the evidence for the prosecution cannot be summarily rejected. After allowing for undue influences and unhappy disregard of truth that characterizes native evidence, the fact, that the prisoners were seen under circumstances that raise a violent presumption of their guilt, remains untouched. The motive of the act unknown, but that the wounding was with intent to murder is evident. The prisoners were therefore sentenced as shown.

1853.

June 18.
Case of
DAKBOO and
ANORUTH.

Sentence passed by the lower court.—Imprisonment for fourteen (14) years each, with labor in irons.

Remarks by the Nizamut Adawlut.—(Present : Messrs J. R. Colvin and H. T. Raikes).—We concur with the jurors in thinking that, though there are circumstances of considerable suspicion in the case, the evidence is not sufficient to justify the conviction of the prisoners. The proof rests indeed entirely on the credibility of the prosecutor himself ; for the statements of most of the other witnesses (two of them repudiate all knowledge of the fact) were not taken at once by the darogah were certainly grossly exaggerated, and were probably tutored. The delay in sending up the prosecutor's statement of the 13th March, till it came with the final report of the 25th March, may have been accidental ; but we cannot implicitly credit the story of the prosecutor, that he saw and recognized the prisoners in the act of firing at him from the jungle.

We therefore acquit the prisoners.

PRESENT :

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT

versus

KHODABUKSH SHEIKH.

RAJSHAHYE.

1853.

June 20.
Case of
KHODABUKSH
SHEIKH.
Prisoner convicted of perjury and sentenced to three years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, perjury, in having on the 16th November 1852, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the moonsiff of Pubnah, that he knew Ramsunker Bhoomick and saw him and others assault Brijomohun Chowdree, on the 22nd October 1852, and in having, on the 8th of January 1853, again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the moonsiff of Pubnah, (Ramsunker Bhoomick being then and there present) that he did not know him, (the said Ramsunker Bhoomick.) Such statements being contradictory of each other on a point material to the issue of the case, and 2nd count, perjury, in having on the 8th of January 1853, deposed, under a solemn declaration taken instead of an oath before the moonsiff of Pubnah (Ramsunker Bhoomick being then and there present) to the effect that he had not mentioned his (Ramsunker's) name as one of those concerned in the assault, when he gave his deposition before the moonsiff of Pubnah, on the 16th November 1852.

CRIME ESTABLISHED,—Perjury.

Committing Officer—Mr. F. L. Beaufort, officiating joint magistrate of Pubnah.

1853. June 20. Case of KHODABUKSH SHEIKH.

Tried before Mr. G. C. Cheap, sessions judge of Rajshahye, on the 30th April 1853.

Remarks by the sessions judge.—This case is precisely similar to the last.* The prisoner was another witness in the same case. On the same evidence the law officer convicts the prisoner of perjury, and concurring in the futwa, I have sentenced him to the same imprisonment; but with reference to his age, without labor or irons.

Sentence passed by the lower court.—Three (3) years' imprisonment.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes).—The prisoner admitted having given the two depositions as laid in the indictment charging him with perjury, but alleged that the Ramsunker he alluded to in the first, was not the Ramsunker subsequently brought forward for recognition when his second deposition was recorded; that consequently he was justified in denying all personal knowledge of the party then before the court. It however appears, that the plaintiff, in support of whose complaint, the prisoner gave evidence, distinctly stated that the Ramsunker before the court was the identical person of that name whom he prosecuted, and to whose acts the prisoner was brought forward by him to bear witness and to which he did bear witness on the first occasion. Ramsunker himself also deposed, that there was no other of his name residing in the village where he lived. The plea of the prisoner on the other hand, is entirely unsupported and falls to the ground. I therefore see no reason to interfere with the sessions judge's order of conviction, or with the sentence passed by him on the prisoner.

* Remarks by the sessions judge on the trial of Seetul, chowkeedar, prisoner, No. 2, of statement No. 6. The charge explains the case, and the contradictory statements having been fully proved to have been made, the law officer covicts the prisoner of perjury. I entirely concur in the *futwa* and have sentenced the prisoner to three (3) years' imprisonment with labour and irons.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

FINGA MOOSULMANEE AND GOVERNMENT *versus* JUDOONATH DUTT.

NUDDEA.

1853.

June 20.

Case of JUDOONATH DUTT.

Prisoner convicted of highway robbery with assault and battery, sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, highway robbery with assault and battery on the prosecutrix, Finga Moosulmanee, and robbing from her person a silver *hassoolee*, value rupees 11-12, and 2nd count, assault and battery on the aforesaid prosecutrix on the highway, and snatching from her person the above-mentioned *hassoolee.*

CRIME ESTABLISHED.—Highway robbery attended with assault and battery, and forcibly taking from the person of the prosecutrix a neck-ring or *hassoolee* valued at rupees 11-12.

Committing Officer—Baboo Issur Chunder Ghosal, Deputy Magistrate of Santipore.

Tried before Mr. J. C. Brown, sessions judge of Nuddea on the 20th April 1843.

Remarks by the sessions judge.—The prosecutrix in this case stated, that she was collecting some dried cow dung, when the prisoner in passing her asked her "who she was" and "where she lived." She replied that it was nothing to him, upon which he fell upon her, and having given her a severe blow on her right arm with a heavy stick covered with sharp knobs, forcibly took a silver neck-ring, valued at rupees 11-12, from her throat and proceeded on his way. She followed him begging him to return her property, which he would not do. At last they came near some men to whom she narrated what had occurred and they chased him, when he threw the silver ornament away. After they caught him he said he would point out where the ornament was if they would release him, and in the hope they would do so, he pointed out where he had thrown the ring, which was found and made over with the prisoner to the police.

The prisoner confessed before the darogah and deputy magistrate, but pleaded unconciousness owing to inebriety. Before this court he denied the charge and pleaded drunkenness. The evidence to the finding it out, and his voluntary confessions are very satisfactorily proved.

His defence was intoxication, which he was desirous of proving, but failed, although that plea if established would have availed him nothing.

Sentence passed by the lower court.—Seven (7) years' imprisonment with labor in irons.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes).—The only defence offered by the prisoner in his appeal is, that he committed the robbery when intoxicated. I see no reason to interfere with the proceedings of the sessions court.

1853.

June 20.
Case of JUDOONATH DUTT.

PRESENT:
SIR R. BARLOW, BART., *Judge.*

KHODABUKSH SANA AND GOVERNMENT
versus
IDOO GAZEE

JESSORE.

1853.

June 20.
Case of IDOO GHAZEE.
Prisoner charged with wilful murder acquitted, he having killed the deceased under great provocation, the deceased having come to dishonor the prisoner's wife as she was sleeping by the prisoner's side.

CRIME CHARGED.—Wilful murder of the prosecutor's brother, Sabur Sana.

Committing Officer—Mr. O. Toogood, officiating magistrate of Jessore.

Tried before Mr. R. M. Skinner, sessions judge of Jessore, on the 6th June 1853.

Remarks by the sessions judge.—On the night of 2nd May, plaintiff's brother, Sabur, leaving his servant, witness, No. 3, at a distance entered the house of the prisoner; presently the witness, No. 3 hearing a noise ran to the spot and saw the prisoner, Idoo Gazee, hit his master with a battee dao (*i. e.* a piece of wood projecting from one side of it); witness, No. 1, also testifies, that being waked up by his cattle who were frightened at the hubbub caused by the struggling in his brother's verandah and hearing his brother cry out to the deceased: "You are my master and come here to dishonor me, I will kill you"—he called to him not to do so, and coming out he saw his brother (the prisoner) strike Sabur in the stomach with the above instrument.

He tied a cloth round his wound, and with the aid of the prisoner, supported Sabur towards his home and put him down, at his request, on a bank near the house of Foreed, witness, No. 4, who hearing their voices, came up and went for water at Sabur's request, and then went to inform plaintiff. Witness, No. 3, when he saw his master wounded, ran away but returned with plaintiff, and with witnesses, Nos. 5 and 6 to the spot where they saw witness, No. 1, and the prisoner tending the wounded man who told them that Idoo had stabbed him. They conveyed him home and got the village barber to replace the entrails and sew up the wound, and when witness, No. 8, the chowkeedar, returned from market, they sent him to the thananah which is 2½ coss off. The wounded man died that evening; subsequently the darogah and mohurrir of the thannah arrived and

1853.

June 20.

Case of Idoo Ghazee.

held an inquest. The body was sent in on the 3rd May, under charge of the witnesses to the inquest, who proved the identity of the corpse. The civil surgeon, witness, No. 13, gives evidence that death was caused by the wound which was a very severe one, and that recovery would have been very doubtful under proper treatment.

Witness, No. 10, deposes, that he had heard of the occurrence, and four days afterwards he and witness, No. 9, (absent) being at Bhuggoty village, met the prisoner whom they knew, and who asked them if Sabur had recovered. They said no, and took him to the darogah.

The prisoner confessed his guilt before the police, repeated his confessions before the magistrate and before me, but says Sabur came at midnight to where he was sleeping with his wife and touched him, without knowing who it was he, prisoner, jumped up and grappled with him and they kept struggling together till they reached the verandah, where finding the aforesaid implement which he took for a piece of wood, he threw it at his antagonist not intending to kill him.

Witness, No. 2 is the wife of the prisoner; her evidence was admitted as corroborative of what witnesses, Nos. 1 and 3 say, it is much to the same purport as her husbands' confession.

The jury consider that the prisoner is not guilty of murder as there is no proof to the intent to kill, but they deem him guilty of culpable homicide.

It is unlikely that he did not know the implement when he picked it up in the verandah, for it is his own; the night was not so dark but what witnesses, Nos. 1 and 3 (as well as the wife witness, No. 2) could see the blow given and the weapon used, but the provocation was great, the blow was given whilst they were struggling in hot blood.

Under the above circumstances, I concur in the verdict of the jury, but I am of opinion that pardon should be accorded.

Remarks by the Nizamut Adawlut.---(Present: Sir R. Barlow, Bart.)---I concur in the prisoner's acquittal. The deceased had formed an intimacy with the prisoner's wife and used to visit her, notwithstanding the prisoner's remonstrances and prohibitions.

On the night in question, deceased entered the house where the prisoner and his wife were sleeping, he put his hand on the prisoner, who cried out "you have come here to dishonor me," seized and struggled with the deceased, and struck him, with a *boytee*, a blow in the belly, of which the deceased died the next afternoon—though the prisoner and his brother immediately on the occurrence did what they could to relieve the wounded man, and sent information to his friends. Beshee Bebee, prisoner's wife, confesses her intimacy with the deceased,

and deposes to the repeated prohibitions of her husband, which were unheeded by the deceased.

The provocation was intense, and the blow was inflicted under circumstances, which involve but little criminality. The prisoner must be released.

1853.

June 20. Case of Idoo Ghazee.

PRESENT:

J. DUNBAR, Esq., *Judge.*

GOVERNMENT

versus

JEHUN SINGH.

SHAHABAD.

1853.

June 20. Case of Jehun Singh.

Prisoner convicted of affray attended with culpable homicide and wounding, and sentenced to five years' imprisonment; his identity being clearly proved though he had evaded justice eighteen years.

Crime Charged.—Affray attended with culpable homicide of Rajroop Thacoor, on one side, and Asman Singh, on the other side, and wounding of Goman Singh, on the other side.

Crime Established.—Affray attended with culpable homicide of Rajroop Thacoor, on one side, and Asman Singh, on the other side, and wounding of Goman Singh, on the other side.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 17th January 1853.

Remarks by the sessions judge.—The particulars of this case were thus described by Mr. judge Hawkins, in his letter to the Nizamut Adawlut, under date the 20th April 1836.

It would appear that on the 5th December last, an affray took place between a party of brahmins on the one side, and a party of Rajpoots on the other, all of them inhabitants of the village of Satear, in which one man of the brahmin party was killed on the spot, and one on the other side, severely wounded so as to cause his death ten days afterwards. The cause of quarrel, as stated by one party was, that Ramdeal Dosad (acquitted) had allowed his pigs to trespass on their lands, and that on being spoken to, he abused them and called the opposite party, who immediately attacked them. The Rajpoots, on the other hand, affirm that finding some of the brahmins beating the Dosad, they remonstrated with them and were at once set upon. Again there is some mention of a difference about the shutting of a road, but whatever the immediate cause of quarrel might have been, it was certainly trivial and arose between one or two of either party, but the real fact would seem to be that the two have been at enmity for years, striving for the office of mookuddum, or head of the village, quarrelling about lands, and (as one of the witnesses says) practising spells upon each other.

1853.

June 20.

Case of JEHUN SINGH.

The train had been laid for some time and it only wanted a spark to set it on fire, the occasion was found in the occurrence which has ended in this trial, and no sooner was an angry word said then swords and clubs were brought in use.

The law officer has convicted the prisoner, Gooman Sing, of being concerned in the affray, and acquitted all the rest.

I agree in the conviction of Gooman Sing and the acquittal of the rest, with the exception of Manogee Thacoor, against whom, I conceive, the evidence to be sufficient to show that he was an active party in the affray. With reference to the loss of lives, and the prevalence of similar offences in this district, I have sentenced Gooman Sing to five (5) years' imprisonment, with labor in irons, but have not issued my warrant for execution of sentence. Warrants for the release of the acquitted prisoners have been forwarded to the magistrate. The depositions of the witnesses, Atma Dosad, Beharree Dosad and Bunsraj Dosad, constitute the principal evidence against the prisoner, Manogee Thacoor, who is shown in the whole record to have been actually concerned and should, in my opinion, be sentenced to the same punishment as Gooman Singh.

The prisoner has eluded pursuit till the present time when he was arrested by the magistrate's chuprassee.

The witnesses, who before gave evidence and swore to the presence and participation of the prisoner in the affray, depose to his identity, and unable clearly to remember the particulars of the case, refer the court to their former evidence.

The defendant pleads an *alibi*, but utterly fails to substantiate the same.

The *futwa* convicts the prisoner of the crime charged, and declares him liable to *tazeer*.

Sentence passed by the lower court.—Imprisonment with labor in irons for five (5) years.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar). —The proof is sufficient. After the lapse of nearly eighteen (18) years the prisoner is sworn to as the identical Jehun Sing, whom these witnesses and several others, not examined on this trial, had seen taking an active part in the affray, and a reference to the old papers shows that his name was mentioned by them at every stage of the proceedings. The appeal is rejected.

PRESENT:

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT

versus

GOBOO NUSHOO (No. 7), AND PUTTUN BEWA (No. 8).

DINAGEPORE.

1853.

June 20.

Case of Goboo Nushoo and another.

Two prisoners sentenced to ten years and seven years' imprisonment respectively on conviction of maltreatment and torture, in having burnt the wife of one prisoner in the private parts, and inserted chillies into the vagina.

CRIME CHARGED.---Maltreatment and torture.

Committing Officer-Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 18th May 1853.

Remarks by the sessions judge.---The prisoners were committed for maltreatment and torture, the person tortured was Soogun, wife of the prisoner, Goboos, No. 7, Puttun, No. 8, is Goboo's, No. 7, mother. It appears that Soogun, was found in her mother's house by the prisoners who seized her by the hair of the head and took her home, where they put chillies and ginger into her vagina, and burnt her with a red hot *chillum* and *charaghdan*, an earthen-ware pipe about a cubit in length with a round top for placing a lamp upon, on the thighs and private parts. Soogun's mother, Monshurry, witness No. 9, first objected to her daughters being taken away as the prisoners threatened to punish her, and afterwards sent her son (apparently seven years old) to follow and see what happened The boy reported that the prisoners had bound her sister hand and foot and burnt her as above stated. Monshurry, witness, No. 9, gave notice at the thannah on the following day, and the mohurrir on his arrival found Soogun in a miserable state in prisoner's house. Soogun was sent to the hospital, and on the 22nd April, the civil assistant surgeon reported that the constitutional effects from the injuries had been such as to endanger life, and that he did not yet consider her quite out of danger. The civil assistant surgeon's evidence on the trial is as follows:—The woman Soogun had been very severely burnt upon the thighs and private parts, causing extensive sloughing, and great constitutional disturbance, so much so as to endanger life; chillies had also been introduced into the vagina causing severe inflamation and subsequent sloughing; she is now rapidly recovering and I consider her out of danger. The chillies came from the vagina after her admission into hospital. The prisoner, Goboo, No. 7, confessed in the mofussil and foujdarry, and his mother, Puttun, No. 8, said in the mofussil that she remonstrated while her son was inflicting the torture and succeeded in getting him to desist, and in the foujdarry, that she was absent during the torture and on her return remonstrated with her son as to what he had done. Before me they both pleaded not guilty and endeavour-

1853.

June 20.

Case of GOBOO NUSHOO and another.

ed to make out that Soogun was a bad character, that she had formerly ran away from her husband, and that on this occasion she was enticed away by three paramours to her mother's house, where the prisoners found her lame and were told that she had a sore. They both, however, allow that they took her home, one holding her by the arm and the other by the hair of the head, and from the evidence of Soogun and her mother supported by the above confessions and answers, I have not the slightest doubt of their guilt. The *futwa* of the law officer convicts the prisoner Goboo, No. 7, as a principal, and Puttun, No. 8, as an accomplice, the former I presume on his foujdarry confession and the latter on violent presumption, in which I concur, and considering the sentence I am empowered to pass inadequate to the guilt of the prisoner, Goboo, No. 7, I recommend that he be sentenced to fourteen (14) years' imprisonment with labor and irons, and the prisoner, Puttun, No. 8, to seven (7) years' imprisonment with labor suitable to her sex.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.) The facts of the case are fully detailed in the letter of the sessions judge to this Court. There can be no doubt the injuries as described by the medical officer, were very severe, and endangered the woman's life. His evidence is to the purport, that both the prisoners were actively engaged in inflicting on her the horrid tortures to which she was subjected. Giving the female prisoner the benefit of her own statement, that she did not actually perpetrate these cruelties with her own hand, there can be no doubt she was present during their infliction; and the features of the case warrant a strong presumption that she was aiding and abetting her son in all his acts. I therefore concur in opinion with the sessions judge and his law officer regarding the guilt of both prisoners, and convicting Goboo Nusho as principal, and Puttun as an accomplice in the crime charged, sentence the former to ten (10) years' imprisonment with labor, and the latter to seven (7) years' imprisonment with labor suited to her sex.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

ANUNDILAL AND GOVERNMENT

versus

AUGNOO.

PATNA.

1853.

June 20.
Case of
AUGNOO.
Prisoner convicted of theft and burglary and sentenced to seven years' imprisonment. Appeal rejected.

CRIME CHARGED.---Burglary attended with theft of property, valued at Company's rupees 128.

CRIME ESTABLISHED.---Theft and burglary.

Committing Officer—Mr. F. J. Cockburn, assistant magistrate of Patna.

Tried before Mr. W. Travers, sessions judge of Patna, on the 31st January 1853

Remarks by the sessions judge.—The prisoner in this case was next door neighbour to the prosecutor, into whose house he bored a large hole and stole the property described in the calendar. He was convicted on his own confession and sentenced to five (5) years' imprisonment with labor and irons, and two (2) additional years in lieu of corporal punishment. The *futwa* of the law officer concurred in the finding of the court.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The prisoner made a full confession before the magistrate as well as to the police, and accounted for his inability to restore or point out the stolen property, by stating that it had been removed from his house by an accomplice who first intoxicated him.

The petition of appeal was preferred to the sessions judge two days after the period allowed for appeal, but I have gone over the case and see no reason whatever for interfering with the order of the sessions judge, sentencing the prisoner to seven years' imprisonment with labor and irons.

PRESENT:

SIR R. BARLOW, BART.,
AND
J. R. COLVIN
AND
J. DUNBAR, } Esqrs. } Judges.
AND
H. T. RAIKES, ESQ, *Officiating Judge.*

GOVERNMENT
versus
MUSST. BUSSUNTO.

BACKERGUNGE.

1853.

June 23.

Case of MUSST. BUSSUNTO.

Prisoner charged with attempting to commit suicide. Held that the sessions judge was competent to pass sentence, and proceedings returned to him for that purpose. Held also that the magistrate was competent to punish the offender, unless he considered the case to call for a more severe sentence than he could pass under Section XIX., Regulation IX., of 1807.

CRIME CHARGED.---Attempting to commit suicide.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 25th May 1853.

Remarks by the sessions judge.—The prisoner was found by her neighbours suspended in her own house by a rope round her neck. Life being not extinct, they quickly cut her down and in a few hours she recovered. On the arrival of the darogah about that time, she confessed that she hung herself because of the constant ill-treatment she received from two men, who each sought for himself to be her exclusive paramour.

Before the magistrate and before the sessions, she denied that she ever had been hung up or that she ever made a confession.

It was however fully proved, that she had attempted suicide and the law officer convicting her of it, declares her liable to discretionary punishment.

Agreeing with this verdict, I recommend that she be admonished and then released, the consequences of the present case being, I should hope, a sufficient warning to deter her from attempting a similar crime again.

Resolution of the Nizamut Adawlut, No. 691, *dated the* 23*rd June* 1853.—(Present: Sir R. Barlow, Bart., and Messrs. Colvin Dunbar and Raikes.)—The Court having perused the papers above recorded, connected with the trial of Musst. Bussunto, observe that the case should have been disposed of by the sessions judge, either if he thought that law to apply to the case, under Regulation XII. 1829, or otherwise under the general powers vested in him by Regulation LIII. of 1803, (Section II. Clause VII.) to pass sentence in cases not specifically provided for by the regulations, but punishable under the Mahomedan law of tazeer, and direct that the proceedings

be returned to that officer, with instructions to pass such sentence upon the prisoner as he may deem proper.

1853.

June 23. Case of MUSST. BUSSUNTO.

They remark that the *futwa* was on this trial of tazeer and rightly for the attempt to commit any forbidden act is, by the Mahomedan law, punishable under that head.

The Court observe, for the future guidance of the magistrate, that he might himself, had he considered the case not to call for a severer sentence than he can inflict, have passed sentence upon the prisoner under the provisions of Section XIX. Regulation IX. of 1807.

PRESENT:

J. DUNBAR, Esq., *Judge*.

SURNAM SINGH AND GOVERNMENT

versus

JYNATH SINGH.

SHAHABAD.

1853.

June 24. Case of JYNATH SINGH.

Prisoner convicted of being an accomplice in a riot attended with culpable homicide, and sentenced to three years' imprisonment. Appeal rejected.

CRIME CHARGED.---With being an accomplice in a riot attended with culpable homicide of Goodree Singh.

CRIME ESTABLISHED ---Being an accomplice in a riot attended with culpable homicide of Goodree Sing.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 23rd March 1853.

Remarks by the sessions judge.—The circumstances of the riot were thus detailed in statement No. 6, for the month of February 1849.

It appears that on Monday, the 21st August, about 70 head of cattle, belonging to the prosecutor and other friends, were grazing in a field belonging to the village of Bussobarree, when at about 4 o'clock in the afternoon, some 200 or 300 people assembled from the adjoining parts differently armed, and commenced driving away the animals therefrom.

It is not exactly clear to whom the field pertained, some say to the plaintiff, some to the deceased, some to a third person; be that as it may, however. The deceased, Goodree Sing, felt himself impelled to remonstrate on this act of aggression, which interference giving offence to the intruders, the witnesses to the fact declare, that the prisoner, Bodhun Sing, ordered him to be thrashed forthwith and that Balgobinda Dass and another person, not before the court, responded to the call so effectually with their *lobundahs* that Goodree Sing fell senseless to the ground and died from the effects of the blows, which he received on the head and temple at about 12 o'clock

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the same night. He was some thirty-five years of age and quite well up to the period of this unfortunate occurrence.

What was the immediate cause which led to this riot and its consequences is involved in the greatest mystery. There seems to have been no boundary dispute whatever between the different parties, nor was any claim asserted by the assailants to the particular field on which the cattle were grazing, nor indeed any reason assigned for their acting so injuriously to the interests of others.

The inquest paper discloses three marks of violence, one on the head, one on the left temple, some on the left hand fracturing a finger."

The prisoner pleads not guilty, but his presence and participation is clearly established.

The witnesses brought forward for the defence deny all knowledge of the plea of *alibi* set up.

The assessors return a verdict of guilty.

Sentence passed by the lower court.—To be imprisoned without irons for three (3) years, from the 13th April 1853, and to pay a fine of one hundred (100) rupees, on or before the 28th day of April 1853, or in default of payment to labor until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The prisoner can scarce be said to have made any defence. He pleaded *alibi*, and then declined to examine his witnesses. The evidence for the prosecution remains wholly unimpeached and sufficiently establishes his guilt. The sentence is confirmed.

PRESENT:

SIR R. BARLOW, BART., *Judge.*

AND

H. T. RAIKES, ESQ., *Officiating Judge.*

GOVERNMENT AND NAIMOODDEEN

versus

GOLUCKCHUNDER DOSS (No. 5), MUNIROODIN. (No. 6), PRAN KHAN (No. 7) AND RAMCOOMAR SING (No. 8).

BACKERGUNGE.

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Case of GOLUCK CHUNDER DOSS and others.

Two prisoners convicted as accomplices in wilful murder, and sentenced one to transportation for life, and the other to fourteen years' imprisonment in banishment.

CRIME CHARGED.—1st count, wilful murder of Ashoree Khondkar, and 2nd count, riot attended with the culpable homicide of Ashoree Khondkar, the wounding of Naimoodin and the forcible abduction of Tumeezoodin, on the 10th December 1852, from which date the said Tumeezoodin has not been heard of.

Committing Officer—Mr. W. M. Beaufort, magistrate of Backergunge.

Tried before Mr. C. Steer, sessions judge of Backergunge, on the 21st May 1853.

Remarks by the sessions judge.—The prosecutor states that a little before dawn of the 10th December last, he was awoke up out of sleep by Arufullah, hawaldar asking for tobacco. He went outside of his house and saw Pran Khan and five or six others sitting there. He asked what they had come for, and was told that their business was to catch hold of some ryots. On this the prosecutor went inside to get a *chillum* of tobacco, when Hurchunder Doss and Goluck Doss gave orders to seize him. The prosecutor hearing this fled and hid himself behind a stack of straw. On the above order being given, the party near the house were joined by a reinforcement from the East, and their united numbers now came to about 20 or 25. According to order, these entered the house and seized Tumeezoodin and Ashoree, the prosecutor's two brothers, and began to walk away with them. Ashoree, however, made his escape, but seeing that they still had possession of his brother, Tumeezoodin, he cried out for help and went and threw himself upon his brother, whom the rioters were carrying away as if he had been a corpse. Hearing Ashoree crying out that his brother Tumeezoodin was being carried off, the prosecutor advanced from his hiding place, which he had no sooner done, then he saw prisoner, No. 7, first hit Ashoree on the head with a club. This not making him leave go his hold of his brother, Arman Sirdar thrust a spear into his side below the right ribs. Ashoree fell over with violence to the ground, seeing which the prosecutor ran up to him and was immediately felled by a blow with a

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club from Summut Khan. The rioters carried off Tumeezoodin and he has not returned to his family since. Ashoree was conveyed to his house by the help of the witnesses and died the same night

The village chowkeedar reported the circumstance to the Rajore Pharee mohurir, who arrived on the spot the same evening, and very properly recorded at once, in presence of witnesses, the evidence of Ashoree. It was essentially the same as that of the prosecutor.

The object of the attack would seem to be to lay hold and carry off the prosecutor, or one of his two brothers, and to extort from them some engagement which would bind them to pay rent to Baboo Ram Ruttun Roy. This notorious character last year bought pergunnah Beer Mohun, and as usual, in virtue of that purchase, claims the lands of every unfortunate less powerful neighbours. In this category is one Annund Roy who holds a kharija talook in the vicinity of the lands of pergunnah Beer Mohun. The prosecutor is a ryot, or says he is of Annund Baboo; and Ram Ruttun before made an unsuccessful attempt to frighten him into submission. That not succeeding, the present case is a fair specimen of the length, a lawless character, like Ram Ruttun, will proceed to, in furtherance of his own object.

The prosecutor's account was fully proved and corroborated by eye-witnesses of the fact, and by the written deposition of the deceased man, which was verified by the attesting witnesses.

Dr. Scanlan proved that Ashoree died from the effects of a spear wound.

The prisoner, No. 7, Pran Khan, who is a peadah in the cutcherry of Ram Ruttun, made a confession at the thannah to the effect that he went with Goluck, gomashta and others to seize the prosecutor, who pertinaciously held out against the demand of rent of Baboo Ram Ruttun, when Ashoree was wounded by Arman Khan and Tumeezoodin carried off, in the manner described by the prosecutor.

This confession is duly proved by witnesses examined at the trial.

At the sessions all the prisoners denied and pleaded *alibi* in their defence.

The witnesses named by prisoners 6, 7, and 8 being present in court were examined, but I set no credit on their testimony.

The *futwa* of the law officer acquitted Ram Coomar (No. 8) for want of adequate proof, and as I coincide in that view, the prisoner was released. The *futwa* convicts prisoners 6 and 7 of riot, attended with culpable homicide of Ashoree and the forcible abduction of Tumeezoodin. But taking into con-

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sideration the illegal object the prisoners had in view; looking at their numbers and the manner in which they were armed; viewing the manner in which they actually did repel the attempt made to hinder them in the prosecution of an illegal act, and considering the pertinacity with which they adhered to and eventually carried out their first design, *viz:* the abduction of one of the brothers, I hold that the prisoners Nos. 6 and 7 are convicted of a more serious offence than culpable homicide. From their motive and object, their conduct and its result and from the spirit in which they acted throughout, if death was caused by their hands at all, it was under the circumstances, wilful murder. Convicting the prisoners, Nos. 6 and 7 of being accomplices in wilful murder, I recommend that they be sentenced to fourteen (14) years' imprisonment with in irons in banishment.

The trial not being completed as regards Goluck, the witnesses in his defence not having been yet heard, his case is still pending orders of my Court.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart., and Mr H. T. Raikes.)—The details of this case exhibit a most aggravated offence committed with the greatest deliberation. The prisoners and many others, not yet apprehended, collected near the house of the prosecutor and his two brothers, and just before the sun rose, when the prosecutor went out to see who had come there, seized him and Tumeezoodin his brother, of whom, it would seem, no trace is to be found up to the time of the sessions trial. Prosecutor was wounded and Tumeez carried off by the assailants, said to be on the part of Ram Ruttun Roy, the sale—purchaser of pergunnah Beer Mohun. Ashoree, deceased, prosecutor's other brother, endeavoured to rescue Tumeez, whom he seized, when the prisoner, No. 7, Pran Khan, struck him a blow on the head with a club. This did not make him let go of his brother; when as the eye-witnesses depose, and as Ashoree himself deposed immediately after the occurrence, before the police mohurir, Arman Sirdar, absent, speared him in the belly; he then fell, was carried home and died that night.

This is no case of affray, but a deliberate assault made by a large party upon the prosecutor and his brothers by whom no opposition was offered. The prisoner, No. 6, in the mofussil, said he was at the Bankaye cutcherry belonging to Ram Ruttun at the time of the occurrence. Before the magistrate he pleaded that he was at home, some two days distant, and made the same defence in the sessions court. Three witnesses were examined to this particular point; their evidence is clearly worthy of no credit. We convict him of being an accom-

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plice in the murder, and confirm the sentence which the sessions judge proposes to be passed upon him.

The prisoner, No. 7, confessed in the mofussil and his confession is proved. He too pleads *alibi*, and has brought forward witnesses in support of his defence ; but no reliance can be placed on such evidence as they have given. Witnesses who speak of time, date and month in support of the prisoner's *alibi* are totally ignorant of any other date, which connects him with the trial. The evidence for the prosecution is on the other hand full and clear. The statements of these witnesses at the earliest stage of the investigation in the mofussil correspond with their depositions before the magistrate, and the sessions court, and the whole is supported by the deposition of Ashoree, shortly before his death, which is verified by the subscribing witnesses. We concur in convicting the prisoner of being an accomplice in murder. The blow of a *lattee* which he inflicted was not, as appears from the medical opinion, the cause of death ; but the prisoner took an active part in the assault, the result of which was the death of Ashoree, and no measure of punishment less than imprisonment for life in transportation would, in our judgment, be adequate to his crime. We sentence him accordingly.

PRESENT :

SIR R. BARLOW, BART., *Judge.*

GOVERNMENT

RAMMOHUN MYTEE (No. 14), AND JADOO SINGH, PEADAH (No. 15).

MIDNAPORE.

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Case of RAMMOHUN MYTEE and another.

The prisoners were originally committed by the deputy magistrate for falsely instituting a suit under Regulation VII. 1799, before the collector in the name of Pureekheet Dass, no person of that name being resident at Doormoot, and for filing a false certificate of the absence of Rhedayram, witness, No. 5, in the collector's serishtah, they having previously apprehended the said witness on a warrant and released him after receiving some money.

CRIME CHARGED.—1st count, the prisoner, No. 14, is charged with perjury in having falsely presented or caused to be presented to the collector of Midnapore, a petition, dated 25th August 1851, under Regulation VII. of 1799, knowing the same to be false, against witness, No. 5, Rhedayram Dass, under the fictitious name of Pureekheet Dass, surburakar of Madhub Anund Dass, lakhirajdar of Doormoot village, pergunnah Magnamoottah, he, the said Pureekheet Dass, not being an inhabitant of that village, and 2nd count, on the 20th September 1851, corresponding with the 6th Assin 1259, with fraudulently issuing, publishing and filing or causing to be fraudulently issued, published and filed in the collectorate as true, a fabricated certificate of the absence of witness, No. 5, dated 25th Bhadon 1259. The prisoner, No. 15, is charged with aiding and abetting as an accomplice in the above charges.

CRIME ESTABLISHED.—On prisoner, No. 14, fraudulently given effect to a forged fabricated petition and of giving effect to a false certificate, knowing them to be such. On prisoner No. 15, aiding and abetting in the same.

Committing Officer—Moulvee Wuheeoodeen Nubee, deputy magistrate exercising powers of a magistrate.

Tried before Mr. W. Luke, sessions judge of Midnapore, on the 24th February 1852.

Remarks by the sessions judge.—It is in evidence that a petition was filed in the collector's court, on the 25th August 1851, by a person designating himself Pureekheet Dass, surburakar of Madhub Anund Dass, and preferring claim to a balance of rent against Rhedayram Dass, witness, No. 5. To this petition the prisoner, No. 14, Ram Mohun Mytee, gave effect by causing to be issued from the office of the collector's nazir, a dustuck, which was given to prisoner, Jadoo Singh, No. 15, to execute. Both these parties proceeded to the village of Doormoot, where they put the dustuck in force by arresting the witness, No. 5, and keeping him in durance in the house of the prisoner, No. 14, for seven days. After which he was released on the payment of three rupees, which were divided between the prisoners. On 20th September, the prisoner made a return of service of the dustuck to the

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intent, that the parties mentioned in the latter had absconded. It is also in evidence that there are no such persons and never have been, as Pureekheet Dass and Madhub Anund Dass residing in, or having any connexion with, the village of Doormoot. There is no proof who the party was who filed the petition, on the 25th August 1851, but after the orders had been passed on it, on 25th August, by the collector, there is abundant proof that the prisoner, No. 14, was the prime mover in giving those orders effect by paying the tulubana to the nazir, and by the active and prominent part he took in all the proceedings attending the execution of the dustuck that contained those orders. The petition is unquestionably a forgery, and the prisoner, No. 14, must have known it to be such when he put it in force aided and abetted by the prisoner, No. 15, Jadoo Singh. It does not appear who wrote the certificate on the back of the dustuck that the alleged defaulter (witness, No. 5,) had absconded, but the presumption is corroborated by the confession of the prisoner, Jadoo Singh, No. 15, that the prisoner, Mohun Mytee, knew that it was a false certificate, and that with such knowledge he caused it to be filed in the collector's court. The prisoner, No. 14, Ram Mohun Mytee, pleads *not guilty* and in defence sets up an *alibi*. The vakeel who appeared in behalf of the prisoner would not call witnesses to the prisoner's allegations of enmity, as the witnesses for the prosecution admitted the fact; the evidence of the *alibi* is contradictory, improbable and unworthy of credit. The prisoner, No. 15, in his defence throws all the responsibility on the prisoner, No. 14; he admits having filed the false certificate, but at the instigation of Ram Mohun Mytee, who likewise bought the stamp paper in his (Jadoo Singh's) name and presented the petition written on it under a fictitious name, and containing a fraudulent and false claim to serve his own malicious purposes. The assessors declare the prisoner, No. 14, Ram Mohun Mytee, guilty of fraudulently giving effect to a forged or fabricated petition and of giving effect to a false certificate, knowing them to be such, and the prisoner, No. 15, Jadoo Singh, of aiding and abetting in the same. I concur in this finding, and accordingly, under the provisions of Section X., Regulation XVII. of 1817, sentence the prisoner, No. 14, Ram Mohun Mytee, to five (5) years' imprisonment, and the prisoner, Jadoo Singh, No. 15, to three (3) years' imprisonment, each with labor in irons.

Remarks by the Nizamut Adawlut.---(Present: Sir R. Barlow, Bart.)---By the evidence of Surroop and Anund Singh, peadahs, it is clearly proved that the prisoner, Ram Mohun, No. 14, was the party who took out the process from the collector's office in company with Jadoo Singh, peadah, both of the prisoners are well known to the witnesses. Koochil Mytee, witness,

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paid the three rupees given to the prisoners for the release of Rhedayram Dass, who was seen in confinement in the house of Ram Mohun, No. 14, by the witnesses Doondyram and Mahmdee Narain; other witnesses prove that no person named Pureekheet Dass resides or ever did reside in the village of Doormoot on whose part the warrant is said to have issued, while Anund Lall Buckshee, the collector's nazir, proves that the prisoner, No. 15, Jadoo, was the individual who made the return, that Rhedayram was not forthcoming,

The prisoner, No. 14, cites several witnesses, the others are repudiated, to prove *alibi;* they are ryots of the village in which he makes collections, and speak of his being at the village at the time of the presentation of the alleged forged petition under provisions of Regulation VII., of 1799, to the collector, the date of which occurrence is August 1851, some eighteen months previous to their examination in the sessions court in February 1853. The sessions judge and assessors reject this evidence. Prisoner, No. 15, pleads, he was merely the peadah who served the dustuck, but his complicity is fairly deducible from the wrongful imprisonment of Rhedayram Dass, the extortion of the money from him in order to procure his release and the filing a a false return in the nazir's office to the effect, that the Rhedayram against whom the warrant was issued was not forthcoming.

The prisoner, No. 14, is charged on the 1st count, with forgery, in having falsely presented or caused to be presented a *petition,* dated 25th August 1851, under Regulation VII. of 1799, in the fictitious name of Pureekhet Dass, surburakare, to collector.

In the 2nd count, he is charged with fraudulently issuing, or causing to be issued and filed in the collectorate, *as true a fabricated* certificate of the absence of Rhedayram, a witness, No. 5.

Prisoner, No. 15, is charged with aiding and abetting as an accomplice in the above offences.

The sessions judge in statement, No. 6, observes, that there is no proof of who the party was *who filed* the said petition; but there is abundant proof that the prisoner, No. 14, was the prime mover in *giving those orders effect by paying the tulubana to the nazir,* and by the active and prominent part he took in all the proceedings attending the execution of the dustuck which contained these orders.

The court, on review of the judge's criminal statements for February last, remarked that "the circumstances stated in the first portion of the charge did not constitute forgery, but only uttering of forgery

The prisoner, No. 14, could not, however, be convicted of uttering a forgery upon the evidence on this record. But one witness, Tarapersad Roy, a mohurrir in the collectorate, who was

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cited by the sessions judge, has been examined on this point, and he deposed that he could not say who filed the petition in question. It was not customary before this case occurred, to have an enquiry as to the identity of persons presenting petitions. Witness could not say who caused the warrant of arrest to be taken out,

The 1st count of the charge must necessarily fall to the ground.

The indictment is not properly drawn. The prisoner ought to have been charged distinctly, with giving effect to the forged petition in the manner adverted to in the remarks on No. 6 statement. He cannot be convicted of giving effect to the forgery by any other acts than those set forth in the indictment in this case; the presenting, or causing to be presented, the petition. The instance in the indictment is *not* proved, though the giving effect to it in another mode is, as will be seen by the abstract of evidence already given above; but that instance forms no part of the charge.

The 2nd count against the prisoner is causing to be fraudulently issued, published and filed in the collectorate, *as true, a fabricated certificate* of the absence of the witness, Rhedayram. He had been arrested and released on payment of some money to prisoners, Nos. 14 and 15, and a return, *non est inventus*, was made by the prisoner, No. 15, *only*, to the nazir's office. This no doubt was a fraud, and the sessions judge accordingly convicts No. 14, of giving effect to a *false* certificate, knowing it to be such, and No. 15, of aiding and abetting in the same.

The term is a *false* certificate, *not a forged one;* and the presumption is that the certificate was not *forged but genuine*, and written by the parties who put it in for the purpose of covering their illegal seizure and exaction in the matter of the witness, Rhedayram.

The count charges filing in the collectorate, *as true, a fabricated* certificate. The finding of the sessions judge on that charge is, giving effect to *a false certificate.* Fabrication is of the essence of the charge; and not having been proved, the conviction of the prisoner, No. 14, cannot be sustained, he is acquitted and must be released,

The prisoner, No. 15, charged with aiding and abetting the above prisoner is, under the circumstances referred to, entitled to an acquittal also, he too will be released,

PRESENT:
J. DUNBAR, Esq., *Judge.*

GOVERNMENT ON THE PROSECUTION OF PAGULRAM DOSS

versus

NEETYENATH (No. 2), SOROOPRAM DEB (No. 3, APPELLANT), HURRERAM BURAIE (No. 4, APPELLANT), AND RAMCHURN BURAIE (No. 5, APPELLANT).

SYLHET.

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June 24.
Case of SOROOPRAM DEB and others.
Prisoners convicted as accomplices in culpable homicide and sentenced to four years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, with the wilful murder of Musst. Mohamoyah; 2nd count, with culpable homicide of Musst. Mohamoyah, by administering drugs to produce abortion, and 3rd count, with privity to the above crimes.

CRIME ESTABLISHED.—With being accomplices in the culpable homicide.

Committing Officer—Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 21st February 1853.

Remarks by the sessions judge.—Musst. Mohamoyah died, as it was reported from cholera, and a police mohurrir was desired to hold a local investigation and he asserted that the report was true. A vakeel, however, Shibram, stated he had heard that the deceased had died from miscarriage and the darogah was deputed to hold an investigation, when it appeared that the deceased was with child by the prisoner, Soroop, and that Neetye prepared some medicine to procure abortion, which was administered to her and when ill, Soroop, Ramchurn and Hurreeram carried her off in a boat to the house of Musst. Bowanee, who delivered her of a dead child. The deceased lived four days after her confinement. The body of the infant was buried near Soroop's house, and the bones were pointed out by Soroop Deb's mother.

All the prisoners made confessions before the darogah and magistrate to the above effect, more or less, and they implicate in the transaction Tonooram, who is made an eye-witness. The evidence of the eye-witnesses, Tonooram and Jugernath, I place no credit in whatever. It was given five months after the transaction, and before the darogah, Tonooram never mentioned Jugernath's name at all. Jugernath is a boy about 15, and says he told no one what he saw till the darogah questioned him.

The confessions of the prisoners are proved to have been made voluntarily, and those of Sooropram, Hurreeram and Ramchurn are borne out by circumstantial evidence.

In their defence before this court, Neetyenath says the darogah beat him, but that he has no witnesses to the fact.

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others.

Soroop says he was only 19 years and the deceased 40, and that illicit connexions between them is very improbable; that Tonooram and Hurreeram gave the deceased some plantain, but that he did not know there was poison in it.

Hurreeram pleads innocence, and says Soroop administered the drug, and Ramchurn denies all knowledge of the case, but admits he was in the boat when deseased was taken away. They called no witnesses.

The assessors convict Neetyenath, Soroop and Hurreeram of culpable homicide; and Ramchurn of being an accomplice, but I consider them all proved to be accomplices.

Sentence passed by the lower court.—To be imprisoned without irons for four (4) years and to pay a fine of rupees thirty (30) each, on or before the 1st March 1853, or in default of payment to labor until the fine be paid or the term of their sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.)—The confessions both in the mofussil and before the magistrate, substantially the same, yet differing in the details, are fully verified. The sentence is confirmed.

PRESENT;

J. DUNBAR, Esq., *Judge.*

SURNAM SINGH AND GOVERNMENT

versus

SHUZAD SINGH.

SHAHABAD.

1853.

June 24.
Case of
SHUZAD
SINGH.
Prisoner convicted as an accomplice in a riot attended with culpable homicide and sentenced, to three years imprisonment. Appeal rejected.

CRIME CHARGED.—With being an accomplice in a riot attended with culpable homicide of Goodree Singh, uncle of Surnam Singh, the prosecutor.

CRIME ESTABLISHED.—With being an accomplice in a riot attended with culpable homicide of Goodree Singh, uncle of Surnam Singh, the prosecutor.

Committing Officer—Mr. A. A. Swinton, magistrate of Shahabad.

Tried before Mr. W. Tayler, sessions judge of Shahabad, on the 16th February 1853.

Remarks by the sessions judge.—The particulars of this case were thus detailed in statement of prisoners punished in February 1849.

"It appears that on Monday the 21st August, about 70 head of cattle, belonging to the prosecutor and other friends were grazing in a field belonging to the village of Bussobaree, when at about 4 o'clock in the afternoon, some 200 or 300 people assembled from the adjoining parts differently armed and commenced driving away the animals therefrom.

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SINGH.

It is not exactly clear to whom the field pertained, some say to the plaintiff, some to the deseased, some to a third person, be that as it may however. The deceased, Goodree Singh felt himself impelled to remonstrate on this act of aggression, which interference giving offence to the intruders, the witnesses to the fact declare that the prisoner, Bhoodun Singh, ordered him to be thrashed forthwith and that Balgobinda Doss and another person not before the court responded to the call so effectually with their *lohbundas,* that Goodree Singh fell senseless to the ground and died from the effects of the blows which he received on the head and temple at about 12 o'clock the same night. He was some 35 years of age and quite well, up to the period of this unfortunate occurrence.

What was the immediate cause which led to this riot and its consequences, is involved in the greatest mystery. There seems to have been no boundary dispute whatever between the different parties, nor was any claim asserted by the assailants to the particular field on which the cattle were grazing, nor, indeed, any reason assigned for their acting so injuriously to the interests of others.

The inquest paper declares three marks of violence, one on the head, one on the left temple, some on the left-hand, fracturing a finger.

Two prisoners were arraigned and sentenced by me on the 7th July 1851.

The prisoner before the court delivered himself up on the attachment of his property.

His presence and participation in the outrage is clearly established by the evidence of eye-witnesses.

His defence is an *alibi,* to support which he brought forward two witnesses.

These witnesses state, that they saw the prisoner in the month of Bhadoon in 1255, but that they *never* had seen him before.

I consider such evidence quite insufficient to affect that for the prosecution which is direct and consistent.

The *futwa* convicts the prisoner of the crime charged and declares him liable to *acoobut.*

Sentence passed by the lower court.---To be imprisoned without irons for three (3) years from the 16th February 1853, and to pay a fine of rupees one hundred (100) on or before the 3rd March 1853, or in default of payment to labour until the fine be paid or the term of his sentence expire.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. Dunbar.) —The evidence in support of the prisoner's plea of *alibi,* is quite unworthy of credit, referring as it does to an alleged accidental meeting with the prisoner more than four years ago. That for

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the prosecution is clear and consistent, and in entire accordance with the testimony of the same witnesses and others, examined in 1848-49. The sentence is confirmed.

PRESENT:

J. DUNBAR, Esq., *Judge*.

GOVERNMENT AND GUNGAPERSAD GHOSE

versus

KALOO (No. 15), KHOSAL NOSYA (No. 16), TYUB NOSYA (No. 18), AND HABIL NOSYA (No. 19).

RUNGPORE, 1853. June 24. Case of KALOO and others. Three prisoners convicted of dacoity with wounding, and sentenced to ten years' imprisonment; another prisoner in the same case convicted as a receiver and sentenced to five years' imprisonment. Appeal rejected.

CRIME CHARGED.—1st count, with committing dacoity attended with wounding in the house of the prosecutor, and plundering therefrom property value rupees 864-9, on the 11th October 1852 corresponding with 27th Assin 1259 B. S.; 2nd count, with being accomplices to the commission of the above-mentioned crime; 3rd count, with taking and having in possession property acquired by the above dacoity knowing it to have been so acquired; 4th count, with having belonged to a gang of dacoits, prisoner, No. 19, and 5th count, with privity to the above-mentioned dacoity.

CRIME ESTABLISHED.—Prisoners, Nos. 15, 16 and 18, dacoity with wounding, and No. 19, taking and having in possession property acquired by dacoity knowing it to have been so acquired, and privity to dacoity.

Committing Officer.—Mr. A. W. Russell, officiating magistrate of Rungpore.

Tried before Mr. W. Bell, officiating sessions judge of Rungpore, on the 7th March 1853.

Remarks by the officiating sessions judge.—This dacoity took place in thannah Cheelmaree, on the 11th of October last, but the darogah was unable to find any clue to the dacoits until the close of December, when Sadoo (witness, No. 9,) gave information, and the prosecutor went to the darogah and had the houses of the prisoners searched.

The prisoners, Nos. 15, 16 and 18, confessed before the darogah and magistrate, and prisoner, No. 19, that he had purchased some of the property.

Witnesses, 1 to 3 and 9, prove a dacoity took place.

Witnesses, Nos. 8, 23 and 24, prove the property found to be prosecutor's.

Witnesses, Nos 8 to 13, prove the mofussil confessions.

Witnesses, Nos. 14 to 18, prove the confessions before the magistrate.

Witnesses, Nos 8 to 11 and 20 to 24, prove property, Nos. 1 to 3, found in ashes in the house of prisoner, No. 15, and No.

7, found under a tree near the house of prisoner, No. 16, and Nos 4, 5, 6, 9, 10 and 11, found in the houses of prisoners, Nos. 16, 18 and 19.

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Before the sessions court, the prisoners all plead *not guilty*, and plead ill-usage by the darogah, as the reason of their confessions, but their witnesses know nothing about it.

I tried this case under Act XXIV. of 1843, and convicted the prisoners, Nos 15, 16 and 18, of dacoity with wounding, and sentence them each, to ten (01) years' imprisonment with labor and irons, and prisoner, No. 19, I convict on the 3rd and 5th counts, and sentence to five (5) years' imprisonment, with labor and irons.

Remarks by the Nizamut Adawlut.---(Present: Mr. J. Dunbar.)---The proof is complete. The property found in the possession of the prisoners has been fully identified as belonging to the prosecutor, and the confessions are fully verified. The sentence is confirmed.

PRESENT:

J. R. COLVIN, ESQ., AND J. DUNBAR, ESQ., *Judges.*

KHUTEEB MUNDUL AND GOVERNMENT *versus* FUREED SHEIKH (No. 1), AND MODHOO MOOCHEE, (No. 2).

NUDDEA. 1853. June 25 Case of FUREED SHEIKH and MODHOO MOOCHEE.

Of two prisoners charged with wilful murder, one was sentenced to suffer death, and the other to transportation for life.

CRIME CHARGED.—1st count, wilful murder of Haneef Mundul; 2d count, being accomplices in the said murder, and 3rd count, privity to the fact.

Committing Officer—Moulvee Abdoo Luteef, deputy magistrate of Calaroa.

Tried before Mr. J. H. Patton, officiating additional sessions judge of Nuddea, on the 30th May 1853.

Remarks by the officiating additional sessions judge.—The prisoners are charged with the wilful murder of Haneef Mundul, and complicity therein and privity thereto in three separate counts, and plead *not guilty* to the indictment.

The prosecutor, Khuteeb Mundul, is the nephew of the deceased, and in substance deposes that his uncle and the prisoner, Fureed Sheikh had been on terms of intimacy with Kaghuzi Bewa, witness, No. 1, for several years, and that there existed feelings of ill-will between them in consequence, that the deceased first kept the widow as his concubine and subsequently contracted a '*nika*' marriage with her. He adds that the deceased built a house for Kaghuzi near his own dwelling, and that of the prisoner, Fureed, and that quarrels were incessant between them,

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Haneef and Fureed, after the completion of the marriage contract in consequence of the latter's continued visits to Kaghuzi. He goes on to say, that he left the deceased one day assisting in the thatching of the house made mention of, and on his return home missed him. Supposing him to be either with Kaghuzi, or at a village in the neighbourhood where there is a *musjid*, which he was in the constant habit of visiting at the hour of evening prayer, he paid little regard to the circumstance, but finding that he remained absent all night, he went out in search of him the following morning. He had not proceeded far when he heard that a dead body had been found in a tank adjoining the village of Kia, and repairing to the spot discovered the headless corpse of his uncle, which he at once identified by a wen growing on one side of the buttocks, and a black edged *dhoti* lying near the body, which he remembered that the deceased wore the last time he saw him. In his deposition before the darogah, the prosecutor expressed his suspicions against both the prisoners and they were arrested accordingly. His reason for suspecting the prisoner, Fureed, he stated to be the feelings of anger and jealousy he was known to entertain towards the deceased on account of the woman, Kaghuzi, and that for charging the prisoner Modhoo Moochee, the extreme annoyance evinced and threats oft repeated by that individual, at having received a beating from him (prosecutor) by order of the deceased, for attempting to flay a dead cow for the sake of the skin, to which proceeding the deceased, to whom the animal belonged, objected and would on no account consent.

The witness, No. 1, *Kaghuzi Bewa,*—admits her previous concubinage and subsequent marriage with the deceased. She also affirms, that the prisoner, Fureed, frequently visited her both, before and after marriage, and on each occasion had forcible connection with her, and never lost an opportunity when he found her alone to express some threat against the deceased for having supplanted him in her affections. She adds that the last time she saw deceased was the day he was assisting to thatch the house he had built for her, she heard the following day that a body had been found in the tank at Kia, and proceeding thither identified the headless trunk of the deceased by the wen or excrescence in the lower part of the back, and the mark of a cutaneous disease on the person. These identifying marks were immediately discovered by her as the corpse was lying with the back upwards. She concludes by saying that the prisoner Fureed's visits were known to the deceased and were the cause of continual quarrels and bickerings between the men.

Kunhai Bagdi, witness, No. 2,—corroborates the story of the double connection carried on by Kaghuzi and shows, that the

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villagers interfered and brought about the *'nika'* marriage between her and the deceased, in the hope of preventing mischief, which they thought was very likely to ensue under the then existing circumstances.

The witness, Tieub Mundul, No. 3,—deposes to the fact of both the prisoners returning to the village on the night of the murder, in breathless haste, from the direction in which the body was found, Fureed having a *dao* under his arm and Modhoo a bludgeon in his hand. The identification was complete as the deponent is not only intimately acquainted with the prisoners, being their fellow villager, but conversed with them and learned that they were returning from Kia.

Bhundul Sheikh, witness, No. 4,—deposes that he saw and spoke to both the prisoners the same night in their progress from the village, in the direction where the body was found armed as described by the last witness.

The witnesses, Huran Mundul and Himaiut Mundul, Nos. 5 *and* 6,—searched the prisoner Fureed's house after the murder by the darogah's order, and found under a heap of dried cow-dung stained with blood the *dao* and blade of a knife produced in court.

The witness, Puran Mundul, No. 7,—also saw the prisoner Fureed armed with a *dao* and another person he could identify, on the night of the murder. They were both running and the prisoner went into his house, and the other person repaired to another part of the village.

The witness, Sumirudin, No. 8,—is a cow-herd and was tending his cattle early one morning, when he came across a headless corpse lying in a tank. It was his information to the chowkeedar of the village that first led to the discovery of the murder.

Two persons, the witnesses Satcowri Khan and Muzdin Mundul, Nos. 9 and 10, formally attest the inquest held on the body of the deceased by the darogah.

The body of the deceased was not subject to a *post mortem* examination, being in an extreme state of decomposition when it reached the sudder station. The process, however, was scarcely necessary in a case where the head had been severed from the trunk.

The witnesses, Nos. 11 *and* 12, *Kalidos Gungoli and Bisembhur Gungoli*,—attest the mofussil confession of the prisoner, Fureed Shaikh, and the latter also verifies that of the prisoner, Modhoo Moochee. The other witness to the latter record is not forthcoming, but his absence is immaterial, as both prisoners have recorded confessions before the deputy magistrate.

These confessions are consistent throughout and disclose the fact, that the prisoner, Fureed, took an active part in the murder,

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and that the prisoner, Modhoo, witnessed the deed standing by as a consenting party, and aiding in its concealment by maintaining a strict silence. These confessions are given in great detail and contain admissions, such as the ownership of the implements with which the murder was committed, which can bear but one interpretation.

The *futwa* of the law officer convicts the prisoner, Fureed Sheikh of being an accomplice in the murder of Hanccf Mundul, and the prisoner, Moodhoo Moochee, of being privy to it and declares them liable to discretionary punishment, the former by *akoobut* and the latter by *tazeer*.

I dissent from this finding. From the admissions of the prisoners and a connected chain of the strongest circumstantial evidence, I have ever seen recorded, I convict the prisoner Fureed Sheikh of murder, and the prisoner, Modhoo Moochee, of being an accomplice therein. All the circumstances of the case are opposed to the probability, that the persons named by the prisoners in their confessions committed the murder. No reason can be imagined for their doing so, while every consideration favors the suspicion against the prisoners. They had both a grievance against the deceased and both openly vowed vengeance against him. It is my belief, that the prisoners alone murdered the deceased and trumped up the story of his being a litigious character, and generally obnoxious to the residents who made common cause against him and contrived his death, to remove suspicions from themselves of being the sole agents in the affairs which their state, manner and appearance as described on the night of the murder would have gone far to confirm.

The proof against the prisoner, Fureed Shiekh, is in my opinion conclusive, and as the murder was a most cruel and barbarous one, and there is nothing in his case demanding a mitigation of the rigour of the law, I recommend him to capital punishment. The prisoner Modhee Moochee is equally culpable in a moral point of view, but the evidence as to his actual participation with reference to his admissions falls somewhat short of that against his accomplice, and I would recommend that he be sentenced to transportation for life.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and J. Dunbar.)—We think that the evidence conclusively establishes the guilt of the prisoner, No. 1, Fureed Shaikh, as a principal in the murder. His confession is distinct to having held the deceased down while others were severing his neck, but there is no proof in support of his, the prisoner's statement, that these other parties were engaged in the crime. Had they been so, it could, in no degree, have extenuated his guilt. The depositions of the witnesses, Bhundul

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Sheikh and Tieub Mundul have heen throughout clear and consistent, and establish that this prisoner, Fureed Sheikh, was seen going with the other prisoner, No. 2, Modhoo Moochee, on the evening of the date of the occurrence, in the direction of the tank where the headless trunk was found, and was subsequently, between 8 and 9 P. M. of that night, seen running back from that direction with the same prisoner, with a *dao* in his hand. It is also proved by the witnesses, Huran Mundul and Himaiut Mundul, that a *dao*, stained with blood, was found concealed in the house of the prisoner, Fureed, upon the search made on the 17th April. We therefore convict the prisoner, No. 1, Fureed Sheikh, of murder, and the act having been deliberate, without circumstances of extenuation, we sentence him to suffer death.

The prisoner, No. 2, Modhoo Moochee, does not, in either of his confessions, acknowledge, as stated by the sessions judge in paragraph 14 of his letter, that he witnessed the deed, *standing by* "*as a consenting party.*" On the contrary, he states in these confessions that he was near the tank only by accident, and had no share whatever in the struggle or violence that was going on there, though he made no report of it afterwards to the police or other parties. But his admission that he was close to the spot at the time, together with the evidence above referred to of the witnesses, Tieub Mundul and Bhundul Sheikh, that he was the companion of the first prisoner both in going to, and in hurriedly running back, from the tank on that evening, coupled with the total absence of credible proof in support of his statement of his merely accidental presence at the spot, amount, in our minds, to convincing circumstantial evidence of his accompliceship in the act. We convict him as an accomplice in the murder, and sentence him as recommended by the additional sessions judge to transportation for life.

PRESENT:

J. R. COLVIN, ESQ.,
AND } *Judges.*
J. DUNBAR, ESQ.,

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Case of SHAN BEBEE.

Prisoner charged with the manslaughter of her infant daughter acquitted. The court observe that the term culpable homicide should have been used instead of manslaughter, which is a term unknown to the Mahomedan law.

CRIME CHARGED.—Manslaughter of her infant daughter.

Committing Officer—Mr. W. B. Buckle, magistrate of Sylhet.

Tried before Mr. F. Skipwith, sessions judge of Sylhet, on the 1st June 1853.

Remarks by the sessions judge.—On the 5th of Bysack, the prisoner, Shan Bebee, went to the thannah and stated to the darogah that she had on the previous day gone with her infant to the house of Hafiz Bux and demanded from him some money, he being the father of her child. That Ramabux, the brother of Hafiz, ordered Mahomed Anees to drive her away and that Anees had pulled her baby out of her arms, and thrown it on the ground and had beaten her severely. The darogah referred the prisoner to the magistrate as no injury to the child was apparent, but she went to the darogah again the next day and showed him her child's head, which was swollen, and on the following day, she re-appeared with her dead child and demanded an enquiry, charging Anees with being the cause of its death.

The darogah held an investigation, but the witnesses named by the prisoner declared, that she had in a fit of passion thrown down her child herself in consequence of Hafiz Bux, leaving the premises, and that the wound on the child's head was occasioned by the prisoner's own misconduct. They admitted, however, that Anees had beaten her, but stated he had done so because she left her child on the ground.

The witnesses have repeated these depositions both before the magistrate and this court, and the prisoner has no witnesses to rebut their testimony. The witnesses examined, on her behalf, by the magistrate, denied all knowledge of the case.

The civil surgeon deposes to the cause of death being a tumour over the left eye caused either by a blow from some blunt instrument or by a fall, but he seems to doubt if it could have been occasioned by a fall upon a smooth clay floor.

The civil surgeon thinks the child was about a month or six weeks old, but the witnesses state, it was about fifteen days only, and a very trifling amount of violence would, at so tender an age, be sufficient to cause death.

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The law officer convicts the prisoner of culpable homicide, but from this verdict I dissent, not being satisfied with the evidence offered.

The witnesses, I allow, are consistent in their depositions against the prisoner, but they bear out her charge of assault against Anees, and her going to the thannah and demanding an investigation makes me credit the remainder of her story. She appears to be a simple country-woman and one not likely to have trumped up a false charge, and must be borne in mind that when the charge of assault was first made, she did not know that her child was injured.

Kurreem Bux and Russool Bux are relations of Anees and all three live in the same premises with Hafiz Mahomed, and yet the prisoner called Russool Bux to support her story, which she would hardly have done had that story been false.

It is barely possible that the contusion over the left eye, could have been occasioned by a fall occurring in the manner related by the witnesses, as in such a case the point of concussion would have been the shoulder and not the head, and I own, I think it probable, from the evidence of the civil surgeon, that the child received a blow from Anees when the mother was assaulted and which she herself did not perceive.

Under these circumstances, not being satisfied with the evidence, I beg to recommend that the prisoner be acquitted.

Remarks by the Nizumut Adawlut.—(Present: Messrs. Colvin and Dunbar).—We agree in the view taken by the sessions judge of this case. The medical officer says in addition to the statements mentioned in paragraph 5 of the judge's letter, "I should say from the position of the tumour, that it was caused by *a blow* and *not by a fall.*"

The whole conduct of the prisoner, in her complaints made on three successive days to the darogah, is also, in our opinion, strongly in confirmation of the supposition of her innocence.

We therefore acquit her, and direct her release.

We observe that the charge should have been of culpable homicide, and not of manslaughter, which is a term unknown to our law, and that the date of occurrence should have been entered as the 15th April, the date of the violence alleged to have been committed by the prisoner on the child, and not the 18th, the date on which death ensued.

PRESENT:

J. R. COLVIN, Esq., AND J. DUNBAR, Esq., } *Judges.*

NAGUR SINGH BABHUN AND OTHERS, AND GOVERNMENT

HURNATH SINGH RAJPOOT (No. 1), DULJEET SINGH RAJPOOT (No. 2), HIRA SINGH RAJPOOT, (No. 3), AND SHEWSUHOY PANDAY (No. 4).

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Case of HURNAUTH SING RAJPOOT and others.

Two prisoners charged with affray attended with culpable homicide, convicted and sentenced to two years' imprisonment, two others acquitted owing to the insufficiency of the evidence.

CRIME CHARGED,—1st count, No. 1, affray attended with culpable homicide of Fuqueer Singh, and Nos. 2 to 4, being accomplices, and 2nd count, Nos. 1 to 4, affray in which Fuqueer Singh, Nagur Singh, Mahraj Singh, Kureembux, Purbhoo Kuhar, Chucchoo Kuhar, Bakhoree Kuhar, Geerdharee Kuhar, Bishnee Kuhar, Julee Kuhar and Gokhool Nonear were wounded, and the aforesaid Fuqueer Singh died after forty-one days in consequence.

Committing Officer—Mr F. C. Fowle, magistrate of Behar.

Tried before Mr. T. Sandys, sessions judge of Behar, on the 28th March 1853.

Remarks by the sessions judge.—Nurkoo Singh, the eleventh prosecutor, styling himself lease-holder of Chandowtee on behalf of Baboo Sheooburt Singh, Gunput Singh, Jyeperkash Singh and Pureag Singh from 1260 to 1266 Fuslee, had taken out a distraint against Duljeet Sing (prisoner, No. 2,),and Hira Sing (prisoner, No. 3,) for arrears of rent, through the sale commissioner, Mohun Lal, (witness, No 14) on the 27th November last, which eventually ended in the sale of the distrained property on the 2nd December following, as duly reported and filed in the collectorate, on the 9th idem.

Nurkoo had also appeared at the thannah on 27th of November, notifying his having got out such distraint, both against the defaulters' cattle as well as their standing crops,* and anticipating a breach of the peace, claimed the protection of the police which was answered by the appointment of Khuderoo peon, (witness No. 13). Accompanied by this peon, Nurkoo reached Chandowtee the following morning, the 28th, when on the speon's showing his warrant to Hira Singh, (prisoner

* As hereafter referred to nevero, interfered with by the sale commissioner.

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No. 3) he natched it away or took it out of his hands.* Shewsuhoy (prisoner No. 4) being then present, though not Duljeet Singh (prisoner No. 2), and the party proceeded to Phooldeah close by where Baboo Hurnath Singh (prisoner No. 1) resides. In the kutcherry there, they found Baboo Hurnath Singh, together with others his connexions, also amongst the accused. The warrant was then given to one Modun Lal to read and copy, during which period there was some talk of having recourse to force, on which Baboo Hurnath Singh accompanied by the rest retired inside, and shortly afterwards a body of men left the village on which Nurkoo and Khuderoo, recovering the warrant, followed them. This portion of the tale for the prosecution rests on Nurkoo, Khuderoo, Oogur Doosad (witness No. 15) and Ramdial Doosads, (witness No. 23) testimony. Thence Nurkoo proceeded to where the Chandowtee grain was stored, near a Pakur-tree close to which the Nubeemuggur road runs and where he found his so styled ten peons, prosecutors Nos. 1 to 10. A large body of rioters had by this time assembled on Duljeet and Hira Singh's fields variously stated at from 2 to 3 *russees* distant from the Pakur-tree and began cutting the crops. Nurkoo remaining behind, dispatched these ten peons to remonstrate with the rioters, who turning on them, the peons ran, pursued by the rioters who overtook and beat them close to the same Pakur-tree and from whence Nurkoo Singh managed to escape uninjured. Here at the same time the deceased is said to have been passing along the road and received a sword wound at the hands of Baboo Hurnath Singh, from the effects of which he died forty-one days afterwards.

Amongst these peons, the persons of Nagur Singh, Kurreembux, Purohoo Kuhar, Chucchoo Kuhar and Bakoree Kuhar, as certified to by Dr. Diaper, showed marks of violence mostly incised wounds, as was also Fuqueer Sings, " an incised wound, three inches long, cutting open the right shoulder joint and from the constitutional effects of which he died." Dr. Diaper was also of opinion, that with the exception of Kurreembux, the wounds of the others including Fuqueer Singh " were inflicted from behind either standing still or running away as the case may be. Exclusive of Fuqueer Singh, the wounded men are said to have been wounded by Duljeet, Hira and Shewsuhoy and others absconded, whilst Baboo Hurnath Singh alone wounded Fuqueer Singh. This portion of

* Though there are contradictions in this as in every other stage of the tales for the prosecution, which it will suffice to exemplify here by noting that according to Nurkoo " though he did not remember, whether Hira Singh snatched away the warrant or not, yet remembered that he held possession of it until they reached Phooldeah, whereas Khuderoo deposes that during such time it was in Showsuhoy's (prisoner No. 4) hands.

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the tale for the prosecution rests on the prosecutors' and witnesse's, Nos. 1 to 12 evidences. The occurrence itself also as regards the offenders concerned, is but very indifferently deposed to either by the peon Khuderoo, or the sale commissioner, Mohun Lal. The latter also was present on the spot as he states on his way back to his office. Mohun Lal first deposed before the magistrate to his having recognized Hurnath Singh amongst the rioters, which he afterwards recanted, declaring him to have been another Hurnath Singh, who appears to have no existence except in his own imagination. This recantation was accompanied by a very dubitive story in itself, not improved by the prisoners cross-examination of him before this court, which fully showed that he is quite '*au fait*' of the village politics of Tindooha, Phooldeeah and Chundowtee. I regard the evidence of this police peon and sale commissioner as those of two trimmers, unwilling to speak the whole truth, they must have been cognizant of, in opposition to the powerful interests which entangle this case on both sides.

Duljeet Singh, (prisoner, No. 2,) was the first to deliver himself on the day of the occurrence, with a counter-complaint against Baboos Rampertab and Rajcoomar, land-holders of the neighbourhood residing at Tindooha close to both Phooldeeah and Chundowtee, and Baboo Hurnath Singh's personal adversaries and Nurkoo Sing's protectors, as shown by Baboo Hurnath Singh's defence, of their having violently cut his crops, plundered his house, wounded Sookharee Kuhar, and Muhabeer Singh having seized and carried himself off a prisoner and then released him after having themselves wounded the people on their own side. Sookharee and Muhabeer's case was investigated and dismissed by the magistrate on 17th January last, as incredible and manifestly manufactured and was confirmed by me in appeal. Its tale itself bears internal evidence of its own concoction. Both shewed trivial wounds of the most suspicious character. Each had one on his leg which their witnesses pretended the Baboos troubled themselves to get off their horses to inflict. His defence before this court is much to the same effect.

Baboo Hurnath Singh and Shewsuhoy Panday delivered themselves up to the magistrate on 4th December last, and Hira Singh on the 8th following.

Before this court, all three pleaded *not guilty*, each attributing the accusations against them to the machinations of Baboos Rampertab and Rajcoomar Singh Hira Singh pretended that he also held a lease of Chundowtee granted by Deepnath, Sheooburt, Gunput, Jeyperkash and Pureag Singh, running from 1259 to 1267 Fuslee, at the same time acknowledging the distraint taken out against him by Nurkoo Singh, and that he was

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at the time of the occurrence absent in search of security to support an action of replevin, but on returning, the sale commissioner told him the distraint had become positive by sale of the distrained property. He called several witnesses in support of such *alibi*, but I need only refer to their answers under examination in proof of its being a manifest concoction; and the same remark is alike applicable to the testimony of the numerous witnesses called in support of Baboo Hurnath and Shewsuhoy Panday's joint *alibi*.* He also entered at length into many other points, which do not seem to call for particular notice, except his acknowledgments of his having schemed to procure Baboo Rampertab and Rajcoomar's attendance before the magistrate by summoning them as witnesses, *vide* his petition No. 105, and these two Baboos' evidences of 20th December last, when both denied Nurkoo Singh being their servant, and on Nurkoo Singh's questioning Baboo Rampertab, he gave a short and singular reply, dubitive in itself and still more so on his sole testimony of Baboo Hurnath Singh, having confessed to him his having inadvertently made use of his sword; and when cross-questioned by Baboo Hurnath Singh, said, that he, Baboo Hurnath Singh, had nothing to do with Chundowtee, but that when Nurkoo procured the lease, he, Baboo Hurnath, wished to obtain it for Hira Singh. Also that Baboos Rampertab and Rajcoomar were the parties really promoting all that had happened, the distrained property having been purchased by their retainers as appears to have been the case according to the distraint record and the commissioner's evidence regarding it before this court. He also questions the regularity of the distraint itself, citing Regulations VII. of 1799, and X of 1812. That no distraint took place on the 2nd Aghun 1260, true, but on his own acknowledgments and as fully proven, it had taken place the day previous, and on the 2nd, the police peon made his appearance. That the distrainer did not legally possess the power to attach standing crops. To this I shall again refer hereafter.

Shewsuhoy pretends, that as a brahmin what had he to do in a fight. He describes himself as having been originally in Baboo Rampertab's employ, and on dismissal, having taken service with Baboo Hurnath as family priest, had aggravated Baboo Rampertab's enmity towards him.

Baboo Hurnath Singh pleaded at length as to his being in no ways interested in Chundowtee, and that had he wished to assist Hira Singh, he could have done so through his own servants. That there was an utter want of proof why he should have personally mixed himself up in such a transaction. That

* All the prisoners being advised by counsel.

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the deceased was personally unknown* to him and that notwithstanding he continued alive so long, the magistrate had failed to confront him with him. That none of the deceased's heirs prosecuted. In short that his personal adversaries, Baboos Rampertab and Rajcoomar were at the bottom of the whole case, the lease being fictitiously held, by Nurkoo Singh on their part; the said Nurkoo being their needy dependant, as was also the case with the prosecutors and witnesses. In proof thereof, he cited upwards of eighteen suits or cases in which they had either acted or given evidence, and references to which fully proved not only that Nurkoo Singh had been their servant, but also that many of the prosecutors and eye-witnesses were their creatures and that ill-will between the Baboos on both sides was of old standing. The magistrate in his proceedings of 14th March last, explains that the prisoner was not confronted with the deceased consequent on the latter not being in danger and his own absence in the interior, and asks why the prisoner himself had not applied for it when he would have been taken to the hospital and that no enquiry had been made after the heirs of the deceased, because there was no paucity of prosecutors.

The *futwa* of the law officer takes exception, both to the nature and character of the evidences and probabilities of the prosecution, also citing the sale commissioner as declining to interfere with the standing crops, to irregularity in the distraint and that Nurkoo Singh's prohibiting the cutting of the crops, the origin of the affray might have been as easily communicated by one as twelve peons† in itself a riotous prohibition. He attributes what happened to Baboos Rampertab and Rajcoomar's endeavouring to dispossess Hira Singh of his lease, through Nurkoo Singh which may have given rise to blows and wounds, affording them an opportunity to implicate Baboo Hurnath Singh, in order to satisfy their ill-will against him.

I agree with this finding on the 1st count, though considering the case in all its bearings, I cannot pronounce an acquittal on the 2nd. As so often noticed in cases of this kind, in which locally influential persons of substance are the real parties concerned on both sides, it is beset with difficulties. Wealth and local influence are both thrown into the scale demoralizing the people, far even beyond what is usual, and thus further debasing the courts of justice. That there has been a vast deal of perjury on both sides, there can be no doubt, arising out of the prisoners' cross-examination. I have been

* Not even disproved by the prosecution though with regard to the story set up about the deceased, the prosecution may have an object in concealing the truth.

† In reality ten.

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obliged to direct the commitment of Bukus Singh (No. 2) and the trial of Goordial Sing (No. 3) witnesses for the prosecution, as the most egregious perjurers of the whole party, and I do not doubt but that all the witnesses to the prisoners' *alibi* merit being placed in the same category. All that has been elicited during the trial regarding Baboos Rampertab and Rajcoomar's connection with the prosecution, sufficiently accounts for its exaggerated character, and the disgraceful influence which damages it, for it is impossible to regard Nrukoo Singh, the troop of prosecutors and witnesses, in any other light than their creatures. In like manner their avowed adversary and neighbour, Baboo Hurnath Singh, as locally influential, if not more so than themselves, more careless of appearances as is notoriously the case generally in such instances, was just in the position according to native habits, for weaker opponents to seek aid from, or to volunteer or to be set up as his agents of retaliation. Both circumstances and localities favor such presumption, and we have an illustration of it, in a small way in the prisoner Shewsuhoy Panday himself, Baboo Rampertab's dismissed employé now Baboo Hurnath Singh's family priest and favored companion for they set up the same joint *alibi* together. Little grudges screen and help forward bigger grudges in every phase of native society, ever most willing to circumvent indirectly through others, rather than boldly risk doing so directly in person. Although unmistakeable inferences thus plainly point to Baboos Rampertab and Rajcoomar on the one side and Baboo Hurnath Singh on the other, as the real parties to the case, it would be vain to look for direct proof of it, which if proffered could scarcely fail of being of a piece with the fiction itself fictitious. In accordance with such a state of things, both Nurkoo Singh and Hira Singh's avowed lessors, thus granting a double leases have maintained studied silence throughout, so that except for the distraint, it would be difficult to decide which of the two men of straw, to recognize as the actual lessee, whether Nurkoo or Hira Singh. Hira Singh attempted to institute a suit for dispossession under Act IV. of 1840, but subsequent to the occurrence under trial, *vide* Duljeet Singh and Hira Singh's joint petition, No. 229, 15th January last, and which to the best of my judgment as upheld by me in appeal, was very properly rejected by the magistrate's order of the 17th January on the back of Hira Singh's mookhtar, Doorgapershad's application, dated 1st December last. That men should commit acts of violence, legal processes having previously issued against them and which it was optional with them to have contested in as legal a manner, and then seek shelter under the act, is directly at variance to the spirit of the act itself. Nurkoo Singh's distraint was legally effected, and was never

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legally contested by Hira Singh at the time, as acknowledged by himself; neither up to the close of this trial has any further notice been proffered of any other measures having been taken to set it aside, beyond Duljeet and Hira Singh's joint petition, No. 185, of 20th December, of their intention to file a suit with such object. In as far, therefore, as regards the period under trial, Nurkoo Singh must be regarded and upheld as the lawful distrainer. The law officer adopts Hira Singh's plea of irregularity in the distraint; if so, Hera Singh had his immediate remedy in due course of law, which he never sought and which in any case is beyond the cognizance of the criminal court. The law officer also supposes the occurrence, if true, to have been of the character of a resistance, cognizable by the sale commissioner. Not so, however, inasmuch as the sale commissioner was put in possession of the property previously attached by the distrainer, which on the 2nd December he duly sold at Tindooha. Baboos Rampertab and Rajcoomar's place of residence and not the distrainer's (who lives in the neighbouring village of Ruttunpoora) and where most of the purchases were made by these Baboos' dependants, some of them being witnesses in the present prosecution. Certainly, the commissioner as deposed to by him, declined interfering with the standing crops, which in his character of sale commissioner and according to existing practice, it would have been beyond his province to have done. But I am not aware of any Regulation which prohibits a distrainer from attaching standing crops, but the contrary, *vide* Section XIII., Regulation XVII. of 1793. If not then defaulters might carry off their crops with impunity. The Regulations referring to payment of rent in kind, or the bhowlie tenure, mostly rest on the vague usages of the country, which admit of much interference with such perishable rents as standing crops both when unripe and ripe. Such a state of things may be undesirable, but I have only to view them in regard to the distrainer's Acts in connection with the occurrences under trial as thus commented on by the law officer. I do not find that the distrainer exceeded his powers by acting at variance to the usages of the country, and that in any case it could neither have been intentional or wilful, as is manifest from the tenor of his application to the police for protection, No. 1, 27th November, in which he specifically refers to the standing crops. His sending ten servants to remonstrate and look after crops, being then forcibly plundered, and to protect which, he had just brought the police peon from the thannah, after having already made the purport of his warrant known to the plunderers, seems in no respect beyond his powers as distrainer, and cannot be viewed as criminal, more especially when no acts of violence have ever

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been alleged, much less proven against these persons in connection therewith. Indeed the very nature of their wounds as certified to by Dr. Diaper, proves their helplessness, and the improbability of their having been self-inflicted.

The homicide of Fuqeer Singh is the exaggeration of the prosecution, evidently concocted to implicate Baboo Hurnath Singh in a more heinous degree. The evidence regarding it as well as other portions of the tale for the prosecution, are not only full of contradictions, short-comings and inconsistencies, but the story, the main facts of which are as follows, is incredible in itself. Fuqeer Singh was an elderly person, an invalid pensioner, a distant connexion of Nurkoo Singh, residing 4 or 5 miles off, was in the habit of visiting Nurkoo, and not finding him at home was returning home the next morning, a traveller on the high road, and had reached the Pakur-tree, when he got wounded there like all the others. This was the first that either prosecutors or witnesses knew of his being there, though some depose to their having seen him from a distance prior to the occurrence, journeying along the road.

The deceased's own depositions meagre in themselves, are yet contradictory. Before the police he only said that he had been on a visit to Nurkoo Singh's the previous evening, had passed the night there and was returning home; before the magistrate he said, that he was proceeding to Chundowtee to meet Nurkoo Singh. According to the first had he been then returning to his home on Nurkoo Singh's own showing, the road by the Pakur-tree was out of his way, and if according to the second, he was proceeding to meet Nurkoo Singh, it is incredible how he could have reached the Pakur-tree and have missed doing so, and have failed to escape with Nurkoo Singh uninjured only one *russee* distant, since Nurkoo Singh himself was all along in the store or granary close to the Pakur, whence he despatched the ten peons to remonstrate with the plunderers. Nurkoo Singh's statement before the police also is different, that Baboo Hurnath Singh had wounded his companion Fuqeer Singh Rajpoot with a sword "*Baboo Hurnath Singh, Fuqeer Singh Rajpoot mere sath the oonh ko tulwar se marin.*" Fuqeer Singh's deposition in itself is not entitled to consideration as a dying declaration, though sent up verified by its attesting witnesses, Nos. 29 and 30, of the calendar, and with the foregoing results it becomes utterly worthless. Further, the improbability of a traveller on a high thoroughfare thus deliberately walking unconcerned into the midst of the riot, in which he must have been well aware before he reached the Pakur, that his friends were concerned, is as gross as the only explanation offered by the prosecution "how could Faqeer Singh have supposed he would have been attacked as a

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harmless traveller'? In the assumed character of a traveller, Fuqeer Singh could not have helped seeing Nurkoo Singh depute the ten peons, their proceeding to the rioters' fields and their flight thence to the Pakur-tree, which they thus reached simultaneously with himself. Thus thoroughly doubtful of the prosecution in its more serious details, I join in the prisoners acquittal on the 1st count, but do not find equal grounds for releasing them on the 2nd.

I cannot doubt the distraint, the day previous through the sale commissioner, the police peon's arrival on the spot the following morning, accompanied by Nurkoo Singh, the production of this peon's warrant, its being taken to Baboo Hurnath Singh's cutcherry, hence the origin of the tumult, none having been attempted apparently the previous day in opposition to the sale commissioner, and the safe guardianship of the attached cattle under Baboos Rampertab and Rajcoomar's protection at Tindooha. It may be viewed as an improbability, Nurkoo Singh escaping unquestioned and unharmed when thus entering Baboo Hurnath Singh's cutherry on such an errand, but it must be remembered that a police peon accompanied him and that no further violence may have been intended than that of plundering the standing crops by force. Nurkoo Singh's proceedings throughout showed a determination to carry out the powers he claimed, to their utmost extent. His deputation of the ten peons therefore, in the police peon's presence, their running back, pursued by the plunderers to the Pakur-tree, where they all got wounded in flight as corroborated by the state of their wounds, seem to me under such circumstances sufficiently consistent and credible.

Objections have been taken to the character of the witnesses for the prosecution as persons on their own showing accidentally present on the spot, and yet so many of them Baboos Rampertab and Rajcoomar's dependants. Little of a better character is ever obtainable in such cases. None but those interested in an affray will stand spectators of it. The witnesses were the most likely persons to have been present and to have aided in the occurrence had they dared.

Crediting so much of the generalities of the prosecution and finding no reason to reject the general testimony in support of them, as circumstantially corroborated, I convict all four prisoners on the 2nd count, but taking into consideration the exaggerated and malicious character of the prosecution, would sentence them as follows :

Baboo Hurnath Singh, (prisoner, No. 1,) to be imprisoned without irons for three (3) years and to pay a fine of rupees five hundred (500) or in default of payment to labor until the fine be paid or term of sentence expire.

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Duljeet Singh and Hira Singh, prisoners Nos. 2 and 3, to two (2) years' imprisonment without irons and to pay a fine of rupees one hundred (100) or in default of payment to labor until the fine be paid or term of sentence expire.

Shewsuhoy Panday, (prisoner, No. 4,) to one (1) years' imprisonment, &c., as above.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and J. Dunbar).—The record shows that most of the witnesses for the prosecution are ryots or dependants of Baboo Rampertab Singh, the acknowledged personal enemy of Hurnath Singh, prisoner, No. 1; several of them, as shown in the sessions judge's report, have been engaged for him to give evidence on his behalf in other cases, and two of them have been committed by the sessions judge for perjury in this case. It is not shown how these men came to be present on the occasion. We do not feel that their testimony can safely be relied on. We therefore put it entirely aside, and deal with the prisoners solely on the evidence of the persons who themselves suffered at the hands of the rioters. Heera Singh and Duljeet Singh are sworn to by most of these, as having been present, and by several of them, as being the very persons who wounded them, and these statements correspond with those made by them when brought before the police on the 28th November 1852, the day of the occurrence. There can be no doubt as to the prosecutor having been wounded on the occasion and in the manner specified, as the civil surgeon shows, that the wounds were on the back, and must have been struck from behind. We see no reason to doubt the evidence against these men, and accordingly convict them on the 2nd charge, and sentence them, as proposed by the sessions judge, to be imprisoned for two (2) years without irons, and to pay a fine of rupees one hundered (100) each, (within fifteen days) or in default of payment to labor until the fine be paid or the term of sentence expire. In the case of Hurnath Singh and Shewsuhoy Panday, we do not think the evidence is sufficient for conviction. In the mofussil depositions, Hurnath is mentioned as having been present by two of the prosecutors, *Nurkoo Singh* and *Moharaj Singh*, and by *Fukeer Singh*, now deceased. The record shows, that both of the former are partisans of Rampertab Singh, and have several times given evidence for him in the courts; and it appears that Hurnath was not confronted with, or personally identified by Fukeer Singh before he died. Shewsuhoy Panday is named by *Nurkoo* and *Bukhoree*, the latter asserting that he was struck by him with a *lattee*. It has already been shown that Nurkoo is a creature of Rampertab Sing, and *Bukhoree* is also his ryot. Deeming this evidence insufficient to establish the

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fact that either of these prisoners was actually present, and took a part in the riot, we hold them entitled to acquittal and direct their discharge.

We observe that the judge states that he was occupied in this trial eighteen days. We do not think that it need have engaged him for nearly so long a period if conducted with due order and despatch. We remark also on the prolix and confused style and arrangement of his report. The judge must exert himself to correct these serious defects in his generally accurate, and laudably zealous and attentive, manner of conducting his duties.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

GOVERNMENT

versus

HURSUNKER SINGH (No. 16), RAMPAUL SINGH (No. 17), ROODPUN SINGH (No. 18), TOKUN SINGH (No. 19), GUNOWREE (No. 20), ASHDHAREE SINGH (No. 21), GOORDYAL (No. 22), JUGGU (No. 23), AND BUNDHU (No. 24).

PATNA.

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Case of
HURSUNKER
SING and
others.
Prisoners
convicted of
affray atten-
ded with se-
vere wounding
and sentenced
to four years'
imprisonment.

CRIME CHARGED.—Affray attended with wilful murder of Tiloki Singh, and severely wounding Hursunker Singh Rasdharee, Juggu, Bundhu, and others, and 2nd count, affray.

CRIME ESTABLISHED.—Affray attended with severe wounding of Hursunker Singh, Rampaul, Asdharee, *alias* Rasdhareo Singh, and others.

Committing Officer—Mahomed Nazim, first principal sudder ameen, with the powers of a magistrate at Patna.

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 18th March 1853.

Remarks by the sessions judge.—The people of mouza Sona, of which village the prisoner Tokun Singh is proprietor, had constructed a dam on a small stream called the Puchoro river, which dam being considered a cause of injury to their crops by the people of Sheikpoora, they came armed and in great force, headed by the prisoner, Hursunker Singh, with the intention of cutting it. They were resisted with arms and in as great force by the people of Sona, under Tokun Singh. Most of the witnesses who accuse the prisoners are partizans of one side or the other; but the circumstance that, with the exception of Tokun Singh, every one of the prisoners of each party was wounded by cutting instruments or hurt by *lattees* is sufficient to prove that the affair was a mutual and premedi-

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tated affray. The defence of Hursunker, Rampaul and Asdharee, *alias* Rashdharee is not that they were not present, but that they merely remonstrated with Tokun Singh ; that they were unarmed and were attacked and wounded by the other side. Tokun Singh set up the hackneyed defence of an *alibi*, and prevailed upon a number of witnesses to support it. Their statements are not worthy of credence. The defence of Rasdharee, Gunowree and Goordyal is, that they were endeavouring to quell the affray or remonstrating against the conduct of Hursunker in endeavouring to cut the bund, when they were wounded. Juggo and Bundhu say, they were wounded by some of the Sheikpoora rioters, when they were quietly engaged in husbandry in the fields. Several witnesses spoke to the fact of Tiloki having struck down by a sword in the affray in their presence and a witness, calling herself his wife, declares that he has not been since heard of; but the chief witness who speaks to the fact of his being wounded is Chitbubal Singh, who gave information of the occurrence of the affray at the thannah. In doing so, he mentioned the names of several whom he saw wounded, but omitted to say any thing of Tiloki Singh ; when he was examined several days after by the police, he said he had forgotton to mention that Tiloki had been killed. As no body was found, this story of Tiloki's death is probably an entire fiction.

Sentence passed by the lower court.—To be imprisoned for four (4) years and to pay a fine of rupees fifty (50) each, on or before the 2nd April, or in default of payment to hard labour until the fine be paid or the term of sentence expire.

Remarks by the Nizamut Adawlut.—(Present : Mr. J. R. Colvin).—There have been two appeals in this case from the prisoners, Nos. 16, 17 and 18 on the one side, and from the prisoner No. 19, Tokun Singh, on the other.

All the other prisoners were wounded in the affray, excepting Tokun Singh, and there can be no doubt that it was deliberate on both sides. The direct evidence to the presence and participation of Tokun Singh is strongly supported by the fact, that his presence on the occasion was mentioned in the first statements made, *on the day of the occurrence*, at the thannah by two of his own people, the prisoners, No. 22, Goordyal and No. 23, Juggu. An engagement with a view to the maintenance of the peace was also taken from Tokun Singh and others, only two days before the affray, or on the 12th October. There can, under these circumstances, be no reasonable doubt of the presence of Tokun Singh, who was the person principally concerned in the dispute on the part of the Sona villagers.

I confirm the convictions and sentences.

PRESENT:

J. R. COLVIN, Esq., and J. DUNBAR, Esq., } *Judges.*

SREEMUTTY DHUNEE

versus

TAZ MAHOMED (No. 6), AND MUNSUR (No. 7).

TIPPERAH.

1853.

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Case of TAZ MAHOMED and MUNSUR.

Two prisoners, one charged with rape and the other with aiding and abetting in the offence acquitted, owing to the improbabilities of the case and the insufficiency of the evidence.

CRIME CHARGED.—No. 6, committing a rape on the person of Musst. Moyrami, daughter of the prosecutrix. No. 7, aiding and abetting in the above.

Committing Officer—Mr. E. Sandys, magistrate of Tipperah.

Tried before Mr. H. C. Metcalfe, sessions judge of Tipperah, on the 1st June 1853.

Remarks by the sessions judge.—At midnight of the 15th of March 1853, the prosecutrix, who was sleeping in the same room with her daughter, Musst. Moyrami, was disturbed by the sudden entrance of the two prisoners, who broke open the door and pushed her violently out, she fell near the threshold and the prisoner, Taz Mahomed, aided by the prisoner, Munsur, who smothered the girl's cries by pressing a cloth on her mouth, commenced having forcible connection with the daughter, Musst. Moyrami. The prosecutrix, who was lying on the outer side of the open door, gave the alarm, and in a short time her neighbours, aroused by her out-cries, came to her assistance, when the prisoners made their escape.

Musst. Moyrami, the prosecutrix's daughter, a married woman, or rather girl of about fifteen or sixteen years of age, gave her evidence in a modest manner to a similar effect. She had met the prisoners a day or two before when returning from fetching water and had been spoken to by them. Declining to enter into conversation with persons of a different sex, they had hinted at the consequences of her refusal, to anger, indeed, at which she was disposed to attribute their subsequent violence. She stated that when awakened by the prisoner's entrance into the hut, she had been held down and prevented from crying out by the prisoner, Munsur, while his companion, Taz Mahomed, forcibly enjoyed her person. As a married woman she was able to add that the act was fully consummated.

The witnesses, Buckshee, Sheik Panye and Juma Gazee, are the neighbours who were aroused by the alarm given by the prosecutrix, and who hastened to the hut to see what had happened. Their arrival disturbed the prisoners, who ran away and in doing so brushed so close by the witnesses, as to

enable the latter fully to recognize them. The prisoners were described as licentious men in the habit of disturbing the peace of the village by similar criminal acts. On the following day, a meeting was keld, and the complaint of the prosecutrix enquired into, when the prisoners admitted having done what was charged against them, but the punchayet seem to have found themselves unable to adjust the serious wrong done. The remaining witnesses speak mainly to this admission before the meeting.

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MUNSUR.

The prisoners pleaded *not guilty*, and stated, that the charge was a fabrication arising from ill-feeling towards them on the parts of certain of the villagers. The prisoner, Taz Mahomed, stated, that he had brought a complaint against the farmer of the village, which included his gomastha, Allee Mahomed, (witness, No. 59,) charging them with exacting illegal cess, and that this act had led to the present charge being brought against them. They called several witnesses to prove this ill-feeling, and thus the case closed.

The Mahomedan law officer remarks, that the recognition at night of the prisoners was in his opinion impossible. That the evidence to the prisoners' admissions before the meeting was not satisfactorily proved, and that the ill-feeling pleaded by the prisoners had been shown to exist. On these grounds, with the addition of want of evidence to the fact, he mistrusted the case for the prosecution, and would acquit the prisoners.

In my opinion, there are sufficient grounds for conviction. The prisoner, Taz Mahomed, is a rather remarkable looking man, being unusually tall for a native of Bengal, and both prisoners are, and have ever been, residents of the same village with the witnesses. I do not consider it at all impossible, but on the contrary perfectly credible, that they should have been recognized while passing so close by persons in the habit of daily seeing them. The asserted admissions before the punchayet seem to me well established; and as to the ill-feeling, to which the prisoners attribute the present charge, I do not, I confess, find anything in the evidence for the defence to justify my rejecting on that ground the clear proof afforded in support of the case for the prosecution. The prisoners seem to be troublesome men in every respect, and have probably had several disputes and some litigation with the farmer of the village, and as a consequence with his agents. But I do not think they have shown that the present charge owes its origin to a wish to retaliate on them, and certainly I could observe nothing in the evidence of the girl to render me distrustful of its entire truth. If she be as the Mahomedan law officer appears to consider her, an instrument in the hands of the farmer or his agents, she must be considered

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a very perfect one, for her manner was strictly that of outraged modesty.

Supposing the court to be of opinion, that the crime charged against the prisoner has been proved, I would recommend that Taz Mahomed should be sentenced to seven (7) years' imprisonment with labor in irons. The offence of his fellow prisoner, Munsur, seems scarcely lighter in its character, for opportunity alone was wanted to a full completion of the crime by him also. But as he did not actually violate the girl's person, perhaps a sentence of five (5) years' imprisonment, with labor in irons, will be deemed a sufficient punishment.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and J. Dunbar.)—We concur with the law officer in thinking that the case for the prosecution cannot be relied on. The crime is said to have been committed on the night of the 15th March; but though the thannah could have been reached during the next day, no complaint was made there till the 18th, and in the statement then given by the prosecutrix, there was no mention of admissions of his guilt having been made by the prisoner before the village punchayet on the 16th. The complaint was also obviously exaggerated, as the prosecutrix stated to the darogah that her daughter was only twelve or thirteen years of age, whereas she appears to have been fifteen or sixteen years old. The story of the violence having been committed in so open and shameless a manner, by entrance into the room where the prosecutrix sleeping with her daughter, is by no means a probable one. The neighbours lived so close that the act could not have been perpetrated against the resistance of Musst Moyrami before they must have heard the alarm, and assembled at the spot. The assemblage of a punchayet of villagers the next day, and acknowledgments of some offence made by the prisoner before them, do not establish the crime of *rape* against the prisoners. We acquit them of that charge and direct their release.

We observe that a plan of the house and neighbourhood should have accompanied this case, and that the *English* calendar should have given the date of the crime, and of the first charge at the thannah. These particulars are only in the Bengalee calendar.

PRESENT:
SIR R. BARLOW, BART, *Judge.*

GOVERNMENT
versus
THEERING GARROW (No. 1), AND SING SING GARROW (No. 2),

ASSAM.

1853.

June 28.
Case of THEERING GARROW and another.
Two prisoners charged with escaping from jail, whilst undergoing a sentence of imprisonment for life, sentenced to suffer corporal punishment.

CRIME CHARGED.—Escaping from jail.

Committing Officer—Mr. H. Driver, joint magistrate of Gowalparrah.

Tried before Captain H. Vetch, deputy commissioner of Assam, on the 3rd June 1853.

Remarks by the deputy commissioner.—The prisoners who are Garrows, and who are both about 45 years old, having been convicted of aiding and abetting in the murder of Bishtoo Cocharree, were sentenced by the Most Noble the Governor of Bengal, to imprisonment for life in the Gowalparrah jail with hard labor in irons, and while undergoing this sentence, effected their escape on the evening of the 2nd February last. No. 1, Theering, appears to have been re-captured the same night, and No. 2, Sing Sing, early the next morning.

The prisoner, No. 1, Theering Garrow and No. 2, Sing Sing, both pleaded guilty to the charge before the joint magistrate and the jury.

They had also confessed before the magistrate. Four witnesses depose respecting the re-capture of the prisoners, while three witnesses depose to their voluntary confession before the joint magistrate.

In their defence they call two witnesses in order to prove that they were advised to escape by a convict of the name of Rungmah, but nothing is established by these witnesses in extenuation.

The jury returned a verdict of *guilty* against both prisoners, in which the joint magistrate concurred and recommended that they be transported beyond sea for life.

I am of opinion that the charge brought against the prisoners, No. 1, Theering Garrow, son of Khijah Garrow, and No. 2, Sing Sing, son of Juriel Garrow, is established on full legal proof, and as they were undergoing sentences of imprisonment for life at the time they made their escape from the Gowalparrah jail, I refer the case for the orders of the Court of Nizamut Adawlut, and beg to recommend that they, the prisoners, be transported beyond sea for life.

Remarks by the Nizamut Adawlut.—(Present: Sir R. Barlow, Bart.)—The proposed punishment is in the Court's judg-

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ment excessive, it will be sufficient to award corporal punishment under the provisions of Section II., Act XVIII. of 1845. The prisoners are accordingly sentenced to suffer 25 stripes each.

PRESENT:

H. T. RAIKES, Esq., *Officiating Judge.*

GOVERNMENT

versus

TAHEROOLLAH NUSHOO (No. 1 B), AND GUBBROO NUSHOO (No, 2 A).

DINAGEPORE.

1853.

June 29.

Case of TAHEROOLLAH NUSHOO and another.

Two prisoners charged one with perjury and the other with subornation of perjury, convicted and sentenced to three years' imprisonment, but sentence reduced to six months' imprisonment with reference to the prisoners ignorance and want of malice.

CRIME CHARGED.—Prisoner, No. 1, perjury, in having on the 26th May 1853, corresponding with 14th Jeyt 1260 B. S. intentionally and deliberately deposed, under a solemn declaration, taken instead of an oath, before Moulvee Soojat Ally, law officer of zillah Dinagepore, that his name is Bhujjun, and that he saw Gubbroo in confinement. Such deposition being false and having been intentionally and deliberately made on a point material to the issue of the case; and prisoner, No. 2, subornation of the above perjury.

Committing Officer—Mr. E. S. Pearson, magistrate of Dinagepore.

Tried before Mr. J. Grant, sessions judge of Dinagepore, on the 4th June 1853.

Remarks by the sessions judge.—The prisoners were found guilty under the following circumstances:—The prisoner A and his brother were in the service of two men, nephew and uncle, bound to serve, each for six years, to pay off rupees 36 advanced. A third brother got married and the prisoner charged his master and his master's uncle with oppression and extortion, founded on some demand in respect to the marriage of the third brother. The prisoner A named the nephew of the prisoner B as one of his witnesses, and it appears that as the nephew was sick or busy it was agreed that his uncle should take his place, which he accordingly did and gave evidence before the moulvee.

One of the accused having allowed the man to go on for a considerable time peached and next day petitioned. The prisoner at once acknowledged that he had personated his nephew and there evidently was no attempt at concealment on his part, or that of the other prisoner at any time, and in fact it was quite impossible where all the parties were next door neighbours. The substitution of the uncle for his nephew would have been at once allowed if solicited, and the course adopted by them can only be attributed to ignorance, conglomeration on

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and another.

finding themselves in court, and confusion of ideas as to falsehood when not injurious being harmless. I think it very possible also that the men accused of oppression, who were by no means so ignorant as their opponents, may have indirectly induced the prisoners to adopt the course they did, and that a severe punishment in this case would have a bad effect in making the poor and ignorant even more averse than they unfortunately are, to complain of oppression, against persons more wealthy or influential than themselves. I recommend that the sentence of three (3) year's imprisonment, passed by me on the prisoners be reduced to six months.

Remarks by the Nizamut Adawlut.—(Present: Mr. H. T. Raikes.)—The record clearly proves, that the prisoner, Taheroollah came forward and gave his deposition in the moulvee's court in the name of his nephew, Bhujjun, and fully admitted having known nothing of the circumstances he pretended to swear to as an eye-witness. It is also proved that the prisoner Gubbroo brought this man with him to the cutcherry along with his other witnesses, and as he was well-known to him, could not have called him up as Bhujjun without having been a party to the substitution.

I therefore, in concurrence with the sessions judge, convict both the prisoners of the offence with which they are respectively charged, but as I also share in the judge's belief that the prisoners were not actuated by malicious motives, but simply by the feeling so common amongst their countrymen of the same class, that there is little harm in deposing as eye-witnesses to facts which they themselves really believe to be true, I remit the sentence of three (3) years' imprisonment, recorded against them, and sentence them respectively to six (6) months' simple imprisonment.

PRESENT:

J. R. COLVIN, ESQ., *Judge.*

RAM MOHUN MOOKERJEA

versus

BISSONATH SIRDAR.

HOOGHLY.

1853.

June 29.

Case of BISSONATH SIRDAR.

Prisoner convicted of receiving plundered property obtained by dacoity sentenced to fourteen years' imprisonment. It was held that the first denial on the part of the prosecutor, that he had lost any property in the dacoity was merely prompted by his desire to escape the inconvenience of a prosecution.

CRIME CHARGED.—1st count, with committing a dacoity in the house of the prosecutor, and plundering therefrom property valued at rupees 151-6, on the 7th November 1852, corresponding with 24th Kartick 1259 B. S, and 2nd count, with keeping in his possession a portion of the plundered property knowing it to have been obtained by dacoity.

CRIME ESTABLISHED.—Keeping in his possession a portion of the plundered property knowing it to have been obtained by dacoity.

Committing Officer,—Mr. G. Bright, joint magistrate of Serampore.

Tried before Mr. J. S. Torrens, officiating sessions judge of Hooghly, on the 15th January 1853.

Remarks by the officiating sessions judge.—The prisoner is charged on the 1st count with having committed a dacoity in the house of the prosecutor, Ram Mohun Mookerjea, on the night of the 7th November last, and plundering property to the value of rupees 151. On the 2nd count, he is charged with having in his possession a portion of the plundered property, knowing it to have been obtained by dacoity. He pleads *not guilty.*

The prosecutor lives in the village of Beli, thannah Horipal; he deposes that his house was attacked at about 12 o'clock on the night in question; that on the alarm having been given by his son, who had escaped from the apartment where he was sleeping when the dacoits had broken open the door, the villagers came up, when the dacoits, who numbered 14 or 16, made their retreat, they were followed some way by the villagers, but none were recognized. The prosecutor showed the gomashtah and the villagers, on their return from pursuit, the boxes broken open and where the property had been plundered from, but he states he did not then specify the articles stolen. On information having been given at the thannah, the darogah of Horipal arrived on the morning and commenced his investigations. Prosecutor then gave him a list of the articles and property plundered, which consisted of several brass and copper plates and other household utensils, a red cloth or shawl and rupees 20 in cash, &c., &c., whilst he was engaged with this darogah, a burkundauze

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arrived from the adjoining thannah of Dhunea Khalee with a letter from the thannah mohurrir. This thannah is about four coss off, and the Horipal darogah immediately left in consequence of the information he had received, taking the prosecutor with him. On the next morning when they arrived he was shown some of the brass plates, the cloth and other property which had been plundered from his house, and which he was then informed had been discovered with the prisoner. He deposes very distinctly to these articles, which are produced before the sessions, being his property. Witness, No. 1, Muddoo Bagdy, is peadah of pharee Dosgharrah; he deposes that he had returned to Dosgharrah towards morning from his rounds along with Ramchurn phareedar and Surroop Khan, the phareedar ordered that they should look in at the house of Muddoo Hari, a kied khalasee residing in the village to see if he was at home. They all went accordingly along with Issore, chowkeedar, and were informed by the wife of Muddoo Hari, that her husband was from home. Witness and Issore, chowkeedar, were left at Muddoo Hari's, the phareedar and Surroop Khan went over to the house of Bissonath Hari, the prisoner, and brother of Muddoo, who lives in the village of Bullubheepore close by, and who, the phareedar said, was a doubtful character; whilst watching, Bissonath himself arrived at his brother's dwelling along with several others, when the witness and his companion, Issore, chowkeedar, recognized some of them including Bissonath carrying bundles, the others made off, but Bissonath was seized with a bundle containing the brazen plates, and some clothes and with red cloth on his person. After they seized Bissonath, Momrez Khan, Sreedhur Hari and Camroodeen, who lived close, came up with others, on hearing the noise. Muthoor, chowkeedar, was despatched with word to the phareedar, who soon after arrived, when the property was examined and information given to the thannah. The mohurrir arrived at 12 o'clock, and in the evening the darogah of Horipal also came, who found the property to answer the description of some of that given in the list by the prosecutor, who also then recognized it. The evidence of Issore Bagdy, No. 2, as to the arrest of the prisoner and the finding of the property with him corresponds with that of No. 1, also of witnesses, Nos. 3 to 5. The latter, however, depose with some reluctance, and their depositions would at first throw a doubt as to the fact of Issore, chowkeedar, having been with the peadah at the time of seizure, this is, however, afterwards cleared; as from what prisoner of himself stated it is evident that Issore, chowkeedar, was there at the time the others came up and found the prisoner arrested, and the property in the hands of the peadah. The defence of the pri-

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soner is, that he had retired after his watch as chowkeedar towards the morning to the house of Sojoodeen in Bullubhee-pore, and was smoking with him when he was called away by Muddoo Bagdy peadah, on his going out they went to the river side, part of the way accompanied by Mooktoram, the other chowkeedar of the village. The peadah sent the latter away and he afterwards produced the property and tied it on the prisoner, and it was thus he was found by Issore, chowkee-dar, and the other witnesses. He states that the case is got up against him in consequence of his having refused to give false evidence in the civil court on part of Mangobind, the talook-dar, who had sent Muddoo peadah to induce him.

The witness, Momrez Khan, states in his deposition, that when he went up and found Bissonath arrested, he had told him that Muddoo peadah had forced the property on him. In the prisoner's examination of the witnesses, he asks if he has not an intrigue with Muddoo peadah's daughter, which has caused the enmity; this is answered in the affirmative. The same question had been put by him to the peadah himself when under examination.

The defendant's witnesses, who appeared, Nos. 12 to 14, depose to his being of good character and his having performed his duties as chowkeedar on the night in question. The testi-mony of Soojoddeen, No. 15, does not support the defence that he was called away by Muddoo peadah when smoking with him; he states that Mooktaram had come to him. There is no doubt of the dacoity having been committed on the prosecu-tor's house on the night in question. The evidence, as to the discovery of the property with the prisoner, is very distinct, though no doubt the opportuneness with which the witnesses remained at his brother's house and arrested him, creates some degree of suspicion. It appears, however, not improbable that they should have called on their rounds as related, and the story that the peadah single-handed had forced the property on the prisoner is not credible or substantiated. The allega-tion of the intrigue does not correspond with the statement of the cause of enmity given in the defence, and is deposed to by witnesses who evidently lean to the prisoner. Conceiving that the evidence convicts him on the 2nd count, that the property found is clearly identified, according to the evidence, as that plundered, I sentence him to (14) fourteen years' im-prisonment with labor and irons, as though it is apparently the first offence. He is a chowkeedar.

Remarks by the Nizamut Adawlut.—(Present: Mr. J. R. Colvin.)—The prisoner's appeal is mainly on the ground of con-tradictions in the details of the statements of the witnesses re-garding the circumstances of his apprehension with the articles

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of property, and of the prosecutor having at first, on the night of the dacoity, stated to the gomashta of the village that no property had been carried off. The denial, by parties robbed, of the occurrence of any loss of property, or even of any attempt on their houses is, however, very common, from their desire to escape the inconveniences of a prosecution. The inconsistencies, in the particulars given by the witnesses to the apprehension, do not, to whatever cause they may be ascribable, at all effect the principal fact in the case, *viz.:* that the prisoner was seized before dawn of the morning after the dacoity, (which occurred at about midnight,) at his own village, four coss from the scene of the dacoity, with part of the plundered property in his possession. His story of the property having been forcibly placed on his person by a single man, Modhoo peadah, through enmity, is, as the officiating sessions judge states, quite incredible. His apprehension, in such a manner, so soon after the occurrence with part of the property on him, raises indeed such a presumption of his participation in the commission of the dacoity, as would have warranted his conviction on that charge, as well as on the second charge of knowing receipt.

I confirm the conviction and sentence.

This appeal was presented on the 15th March, but the papers were not received in this court till *the 22nd instant.* They appear to have been detained on the account of the commitment and trial of another party (Modhoosoodun Haree) for the same offence. But the transmission of an appealed record ought on no account to be delayed ; copies may be made of any papers necessary for a second trial, or that trial may for a time be postponed. A prisoner under sentence is entitled to the earliest possible hearing of his appeal.

PRESENT :

J. R. COLVIN, Esq., AND J. DUNBAR, Esq., } *Judges.*

JUGGURNATH DASS AND GOVERNMENT

versus

GUNESH PANDAY (No. 3), DHUNNERAM* (No. 4), KISHORE (No. 5), AND JUGGOO* (No. 6).

PATNA.

1853.

June 30.

Case of GUNESH PANDAY and others.

Two prisoners charged with theft of property from a boat, acquitted for want of evidence.

CRIME CHARGED.—1st count, prisoners Nos. 3 to 6, theft of property valued at about rupees 1,000, belonging to Ramput Dass Bhagmul, from the boat of Gunesh Pandy, defendant, No. 3; 2nd count, fraudulently landing from the boat of Gunesh Pandy, defendant, No. 3, the above-mentioned property; 3rd count, prisoners Nos. 5 and 6, being accomplices in the crimes charged above, in having assisted in landing the property aforesaid, and 4th count, prisoner, No. 6, receiving and having the property aforesaid, knowing the same to be stolen.

Committing Officer,—Mr. W. Ainslie, magistrate of Patna

Tried before Mr. R. J. Loughnan, sessions judge of Patna, on the 6th June 1853.

Remarks by the sessions judge.—The cause of this reference is a difference of opinion between myself and the law officer respecting the guilt of the prisoners, Gunesh Panday and Kishore, to prove which I consider the evidence insufficient.

The circumstances of the case are as follows :—The prosecutor deposes that he is gomashta of Ramput Dass and Bhagmul of Mirzapore. Sheolall the churrundar, and Bhuttoo the manjee in charge of a boat laden with pepper and sapan-wood despatched from Calcutta by Nurrain Dass, gomashta of the said Ramput Dass and Bhagmul consigned to the firm at Mirzapore, reported to him the arrival of the boat at Patna on 2nd of Buddee Magh, which corresponds to 2nd Magh F. S. and gave him the invoice or rather letter marked F. written by the said gomashta. About the 6th of the following month of Falgoon, he was informed by the letter of the Ghazeepore gomashta of the same firm, that the boat had gone down at a place called Bahrunpore, that he proceeded to the spot, found that the manjee and churrundar had absconded and ascertained by sending down divers that the boat contained nothing but sand. While at this place he heard that the pepper was being sold at Dinapore and other places, and returning to Patna was told on the date of Falgoon Soodee 6th, by Mungul

* These prisoners have been acquitted by the sessions judge.

1853. June 3d. Case of GUNESH PANDAY and others.

(who is not among the witnesses cited by him), that Gunesh Panday, Kishore and Juggoo, prisoners, and other servants of the first named, had plundered the boat with the connivance of the churrundar and manjee and sank it. He therefore preferred charges against three of the prisoners the same day and against Dhunneeram twenty days after, on hearing the depositions of his own witnesses before the magistrate. The petition is dated 15th March, which corresponds with Falgoon Soodee 5th ; but as there were two days counted as the 4th, plaintiff may not unnaturally have made a mistake as to the date. Before this, *viz.:* on the 22nd February, on the information of the witness, Jhomuck, the prisoners, Juggoo and Kishore, were taken into custody on suspicion of having in their possession 63 *boras* of pepper knowing it to have been stolen. The said informer deposed in this court that he was led to suspect the pepper to be stolen by prisoner Kishore having come to the shop of a pansaree named Gunesh, and offered pepper for sale at rupees 2, under the market price. Mehuddee Aly, darogah, proved the finding of 63 bags of pepper in the *gola* of prisoner Juggoo, on 27 of which there was no other mark than the name of Roop Chaund, and on the remainder no mark at all, and that Kishore on being questioned by him said the pepper belonged to Tuhul Sahoa of Dooreegunge, who had employed him to take it to the gola of Juggoo, there to be sold by him on commission, which he had done. Two witnesses also proved this statement of the prisoner. Search was, on this made at Dooreegunge, to which Uhamed Aly, burkundauze, deposed saying, that the only person he could find there of the name was a needy and small shop-keeper, who carried his whole stock on his head from place to place. Another Tuhul Sahoa was brought forward in the magistrate's court and claimed the pepper, stating himself to be an inhabitant of Manoopoor, a village about two miles (one coss) from Dooreegunge. This man was committed to take his trial in this court for perjury, but was acquitted before this case came on for trial. The prosecutor has, in my opinion, brought some suspicion on his case by citing such witnesses as he has done to convict Gunesh Panday, Dhunneram and Juggo, prisoners, with the alleged robbery of the boat. Nuthun and Kadir Aly (this is to be gathered from their own statements) were sent on board the boat by Gunesh Panday, for no other purpose than to witness the landing of part of its contents, say 113 *boras* of pepper, and the conveyance of 63 *boras* to the *gola* of Juggo in Mahrajgunge. Imritlall and Dhunnoolall being accidentally passing a *gola* in Mahrajgunge saw, they say, Gunesh and Dhunneram (Imrit lall says the witness Nuthun was also of the party) sitting there while some coolies brought up bags of pepper. A fifth

1853. June 30. Case of GUNESH PANDAY and others.

named Runnoolall deposed to over-hearing a quarrel between Gunesh and several others, about taking the whole of some goods to his own share and allowing nothing to the churrundar and mullahs. The sum and substance of the evidence against Gunesh is contained in the testimony of their five witnesses; for Gunesh's admissions before the magistrate are not evidence as they are not authenticated. Gunesh's name appears indeed in the security bond marked B., executed by some ghat manjees in Calcutta for Bhuttoo the manjee of the boat, but in what capacity, it is not possible to make out. In the receipt marked A. which embodies also the contract of the manjee Bhuttoo, the boat is described as his own. The letter of Ramnarain the Calcutta gomashta written at foot of the invoice marked D, to the hand-writing of which prosecutor swears, mentions that the boat belongs to Gunesh Panday; but all this, even if it were admissible as evidence, is not sufficient to involve this prisoner. I therefore think him entitled to his acquittal and discharge.

With respect to the guilt of the prisoner, Kishore, the court will perceive from the record, that under a misapprehension as to the finding of the law officer and as to the applicability of the 4th charge of the calendar to this prisoner, I convicted him on that charge and passed sentence upon him.

I exceedingly regret this untoward mistake, the more so as I am unable satisfactorily to account for its occurrence. The charges were indeed entered on the calendar in a manner not unlikely to cause confusion if they were not attentively considered; and the rough draft only of the *futwa* in which the charges were referred to by their numbers in the calendar and not inserted at length, was read out at the hour usual for the court to rise.

But these circumstances are insufficient to account for it, and I fear that the details of the evidence in a case of some intricacy engrossed my attention to the prejudice of matters of equal importance.

I am happy, however, to think that as the execution of the sentence was as usual suspended, the consequences of the error are not irreparable.

Concluding that the sentence in question is null and void, I therefore thought it the proper course to refer the trial of this prisoner also for the orders of the Court of Nizamut Adawlut, by a second order this day recorded, and have only to add that as the guilt or innocence of the prisoner on the charge of which the law officer convicts him, rests on the same evidence as that of the prisoner, Gunesh, I consider him also entitled to his acquittal on all the counts on which he stands charged, but would instruct the magistrate to commit him again for trial on

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a charge of receiving and having property to the value of a rupees 1,000, or thereabouts, belonging to Ramput Dass and Bhagmul, knowing it to have been stolen

Remarks by the Nizamut Adawlut.—(Present Messrs J. R. Colvin and J. Dunbar).—We concur with the sessions judge in thinking that there is not credible evidence for the conviction of the prisoner, No. 3, Gunesh Panday. The account given by the witnesses against him of what passed, and how they came to have knowledge of the part alleged by them to have been taken by this prisoner, is exceedingly improbable, and open to suspicion. Had the prisoner made admissions, criminatory of himself, before the magistrate, or before any other party, evidence to such admissions would, indeed, have been quite proper to be received in support of other proof, though the admissions had not been formally recorded as confessions by the magistrate. But there is, on this record, no admission by the prisoner, Gunesh Panday, of his guilt, in any degree, in regard to any of the offences charged.

We, therefore, acquit the prisoner, No. 3, Gunesh Panday, and direct his release.

We set aside the conviction by the sessions judge of the prisoner, No. 5, Kishore, on the 4th charge, as that charge was not preferred against him, but only against the prisoner, No. 6, Juggoo. The Court acquit him on the charges laid against him on this trial, and direct his release. It will be in the discretion of the magistrate to recommit him on any other charge.

PRESENT:

J. R. COLVIN, Esq., AND J. DUNBAR, Esq., } *Judges.*

BHUTTON AND GOVERNMENT

versus

BERANJEE (No. 10), UKLOO (No. 11), AND JEEUN (No. 12).

PATNA.

1853.

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Case of BERANJEE and others

The prisoners charged with wilful murder and highway robbery, acquitted owing to the insufficiency of the evidence.

CRIME CHARGED.—1st count, wilful murder of Leela Gurraree; 2nd count, highway robbery, with murder of Leela Gurraree, and 3rd count, highway robbery, with culpable homicide of Leela Gurraree.

Committing Officer—Mr. W. Ainslie, magistrate of Patna.

Tried before Mr. B. J. Colvin, officiating commissioner with powers of a sessions judge, Patna, on the 14th June 1853.

Remarks by the officiating commissioner.—The charge upon which these prisoners were first committed by the magistrate, was wilful murder. On comparing the *roobakaree* of commitment with the charge so laid, I, with the concurrence of the law officer, ordered it to be altered to what now appears according to paragraph 3, Circular Order, 14th November 1851.

The prisoners all deny the crime with which they are charged.

The facts deposed to in evidence are, that the deceased, and Inderjeet, witness, No. 1, were returning home just at dark on the evening of the 8th of May or 15th Bysakh 1260 F. S., when on the bank of a tank, near Bhugwangunge, they were attacked by five men; *viz.*, the three prisoners, and Choba and Moba not apprehended.

These two attacked Inderjeet, who, however, escaped and called for aid, while the three prisoners attacked the deceased with clubs, a blow from one of which, on the head dealt by Beranjee caused his death.

Of his death and of its being the result of a blow on the head, there can be no doubt; the only thing to be considered is, whether the prisoners, or any of them, were the guilty parties. Inderjeet says, he saw them deal the blows. Ajoobah (witness, No. 2), says in this court, that when he ran up attracted by the noise, he saw the three prisoners striking deceased; but before the magistrate he only said, he came up and found Leela on the ground. Another witness, Rehayet Hussein Khan, a burkundauze, gave discrepant evidence, inasmuch as he said before me, that he seized Ukloo and Jeeun, as they were running off, and then came to the spot; while before the magistrate he said, that he went first to the spot, and then after the

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accused. All accounts agree that Ukloo and Jeeun were apprehended the same night, and Beranjee the following morning.

It is remarkable that no *lattees* or clubs were seized with any of the prisoners, nor any weapons with which the blows were said to have been given, have ever been produced, but the evidence of the witnesses and Dr. Dicken proves that the blows must have been inflicted with a heavy club.

The greatest difficulty to be got over is, the fact that the testimony of all the witnesses is that the deceased, just as he was expiring, named the three prisoners as having attacked him. Whereas Dr. Dicken, the surgeon, deposes, that it is very unlikely and scarcely possible that he should have spoken after receiving such a blow; at the same time he says that the blow was the undoubted cause of death.

The question is whether the discrepancies which I have mentioned and the opinion of the civil surgeon, are enough to invalidate the rest of the evidence.

It is certain that the deceased was killed. Setting aside the alleged fact that the deceased had mentioned the prisoners' names, Inderjeet at once proclaimed the prisoners and a hue and cry being raised, pursuit was immediately made and Ukloo and Jeeun were seized that night, and Beranjee the following morning. There was no delay whatever and there was no reason why the prisoners should have been accused if not guilty; but on the other hand there was no property taken nor is there any corroborative evidence of that of the witnesses, which is all unsupported testimony, and it is difficult to account for no *lattees* or clubs being forthcoming, or why they should not have been found on, or when dropped by, the prisoners who were so immediately seized.

Under these circumstances I cannot find the prisoners guilty. The law officer convicts them of the 3rd count, (*i. e.*) of highway robbery with culpable homicide and would sentence them to "acoobut shudeed." The trial is therefore referred for the Court's orders.

The prisoners have been offered their temporary discharge on security, according to Section VII., Regulation XIV. of 1810.

Remarks by the Nizamut Adawlut.—(Present: Messrs. J. R. Colvin and J. Dunbar).—We find too much doubt in the earlier circumstances of this case, as well as in the opinion of the medical officer that it is scarcely possible that the deceased could have spoken after receiving such a blow, to warrant a conviction of the prisoners.

The attack is said to have been made on the evening of the 8th May, and two of the prisoners, No. 11, Ukloo, and No. 12, Jeeun, are stated to have been immediately apprehended. A police burkundauze was on the spot, *yet no report reached the*

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thannah (although only six koss distant) till *the* 10th, and then nothing was said of Ukloo and Jeeun having been already apprehended, or of their having been recognised in the affair. Indeed, the thannah jemadar, after reaching the village on the 10th, reported that he was engaged *in endeavors to apprehend the prisoners*. The police burkundauze, Rehayet Hussein, drops one day altogether in his account of what happened. For he says that he kept Ukloo and Jeeun in arrest during the night after their apprehension, a Sunday* and that the jemadar came the *next* morning; whereas, as first said, he did not arrive till the 10th, Tuesday.

There can be no doubt that the deceased was killed by the blow of a heavy club; but there is considerable room for a suspicion that the case has been unfairly got up against the prisoners. We therefore acquit them and direct their release.

The officiating commissioner appears we observe to have been under a mistake in saying, in paragraph 6, of his letter, that the witness, Ajoobah, No. 2, only deposed before the magistrate that "he came up and found Leela on the ground." That deposition further contains a statement that *the three prisoners were beating Leela with clubs*, and that he had fallen on the ground.

* *Note.*—The 8th May was a Sunday.

SUMMARY CASES.

PRESENT:
J. R. COLVIN, Esq., *Judge.*

GOVERNMENT
versus
BISHNOO KOIBURT

MYMENSING.
1853.
June 1.
Case of BISHNOO KOIBURT.
In a trial for perjury, the prisoner was acquitted by the sessions judge in concurrence with the futwa of the law officer on account of his youth. Held that although the futwa exempts a prisoner because the record does not show that he has arrived at manhood, the Court has power to pass sentence on the prisoner if it is proved, that from his intelligence and capacity of judging as to the nature and consequence of his acts, he is a proper object of punishment.

CRIME CHARGED.—Perjury, in having on the 21st January 1853, intentionally and deliberately deposed under a solemn declaration taken instead of an oath, before the joint magistrate of Jumalpore, that he has no connection with Chand Koiburt, such statement being false and important to the issue of the case.

Committing Officer—Mr. A Abercrombie, assistant, with the powers of a joint magistrate, Jumalpore.

Tried before Mr. W. T. Trotter, officiating sessions judge of Mymensing, on the 4th February 1853.

Remarks by the officiating sessions judge.—This prisoner was named by prisoner, No. 4, (of the conviction statement) as his witness in a case before the joint magistrate, and he, in his deposition, denied that he was related to him (No. 4), Sheikh Jhallee, who was prosecuted by No. 4, however, informed the joint magistrate that he was related, which led to the enquiry in which the prisoner, before the darogah and the joint magistrate, acknowledged that he was a relation and had concealed it from the knowledge of the court at the instigation of one Kurreemoollah, talookdar, who was appointed by No. 4 as his mookhtear or agent in that case. In this court the prisoner confessed and acknowledged his mofussil and foujdarree confessions. But from the extreme youth of the prisoner, the law officer declared that he was not liable to punishment. I concurred in the *futwa* and directed his acquittal.

Resolution of the Presidency Court of Nizamut Adawlut, No. 591, *dated the 1st June* 1853.—(Present : Mr J. R. Colvin.) —The court, having perused the above proceedings connected with the case of Bishnoo Koiburt, inquired of its law officer, whether he holds, upon the record, that the prisoner who is stated to be sixteen or seventeen years of age, was, according to the Mahomedan law, to be held exempt from punishment for perjury by reason of his youth. The *futwa* given in reply has been, that the prisoner is to be so held exempt, because the record does not establish that he had arrived at manhood. Distinctions of this kind would not, however, affect the power of the Nizamut Adawlut, on a reference to it, from passing a just sentence for the crime on the prisoner, if the facts shown as to his intelligence, and capacity for forming a judgment as to

1853. June 1. Case of BISHNOO KOIBURT.

the nature and consequence of his acts, should be such as to render him a proper object of punishment. The proceedings of the officiating sessions judge upon the trial have been defective, in not recording the inquiries upon which that officer satisfied himself that the prisoner was not aware of the obligation of an oath. The reasons for such an opinion, as the ground for acquitting a prisoner, ought always to be apparent upon the record.
